

MINUTES OF THE HOUSE ETHICS AND ELECTION COMMITTEE.

The meeting was called to order by Chairperson Representative Tony Powell at 3:30 p.m. on January 28, 2002 in Room 521-S of the Capitol.

All members were present except: Representative Cindy Hermes, Excused
Representative Troy Findley, Excused
Representative R.J. Wilson, Excused

Committee staff present: Kenneth Wilke, Revisor
Shirley Weideman, Secretary

Conferees appearing before the committee: Secretary of State Ron Thornburgh

Others attending: See attached list

Chairman Powell received a request from the American Government students at Hiawatha High School to amend the constitution to allow 17 year olds who will turn 18 before the general election to vote in the primary election even if they are 17 years old.

Without objection, it will be introduced by the committee as a House Concurrent Resolution.

Chair Powell introduced Secretary of State Ron Thornburgh. Secretary Thornburgh gave an overview of federal election reform legislation. He stated that the most important elements of election reform are to educate people, reform the process and reform the technology (least important), however, most of the election reform concerns technology. Secretary Thornburgh gave a side-by-side comparison of H.R. 3295, the Ney/Hoyer "Help America Vote Act" and S. 565, the Dodd/McConnell "Equal Protection of Voting Rights Act". The House version (H.R. 3295), which passed the House of Representatives on Dec. 12, 2001, contains provisions for 1) effective date for mandates/minimum standards, 2) penalties for noncompliance with mandates/minimum standards, 3) agency responsible for oversight, 4) grant programs, 5) access for disabled, 6) provisional voting, 7) statewide voter registration system, 8) file maintenance, 9) overvote correction, 10) federal voluntary voting system standards, 11) audit capacity, 12) error rates, 13) overseas voters, 14) voter education, poll worker training, 15) Help America Vote College Program and Help America Vote Foundation, 16) compliance with existing federal laws, 17) supplantation/retroactive payments and 18) audit/report requirements. The Senate bill (S.565), which should come up for a vote in February, has no provision for overseas voters, voter education, poll workers training and no "Help America Vote" program or foundation. It does add provisions for 1) alternative language accessibility, 2) voter fraud, 3) requiring voter identification, 4) overvote notification, 5) posting information at the polls and 6) criminal penalties. (Attachment 1) He discussed the possible costs to the state for election reform and possible sources of funding.

Secretary Thornburgh responded to committee members' questions.

Chairman Powell adjourned the meeting at 4:15 p.m. The next scheduled meeting is January 30 at 3:30 p.m.



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Side by Side Comparison:

H.R. 3295, the Ney/Hoyer "Help America Vote Act" and S. 565, the Dodd/McConnell "Equal Protection of Voting Rights Act" (Draft of December 2001)

Information compiled by Alysoun McLaughlin and Susan Parnas Frederick. Last updated January 11, 2002.

Topic	H.R. 3295	S. 565	NCSL Position
Status	Passed the House of Representatives December 12, 2001 by a margin of 362-63.	Amendment submitted December 19, 2001.	NCSL supports H.R. 3295. NCSL opposes S. 565 as it is currently drafted.
Effective Date for Mandates/Minimum Standards	Certification that state has passed legislation to provide for each requirement within two years of enactment. Automatic waiver upon request until November 2004. No required date for full implementation.	Full implementation by January 1, 2006 (unless otherwise noted below).	NCSL supports the mechanism in H.R. 3295 that allows states flexibility in the timeline for implementing complex requirements, such as a statewide voter registration database.
Penalties for Noncompliance With Mandates/Minimum Standards	State certifies compliance. If a state does not certify or if the Commission has credible evidence that a state has provided a false certification, the Commission shall notify the Attorney General, who may then bring a civil action for declaratory or injunctive relief.	Authorizes the Justice Department to bring a civil action for declaratory or injunctive relief for noncompliance. The Justice Department shall promulgate guidelines for implementation. Safe harbor in effect for states that receive a federal grant under this Act until January 1, 2010, except for those requirements pertaining to disabled access.	NCSL supports the provisions of H.R. 3295. NCSL does not support granting unrestricted authority to the Department of Justice to establish and enforce regulations that federalize state election administration.
Agency Responsible for Oversight	Election Assistance Commission (new). Four-member panel of experts in election	Election Administration Commission (new). Four-	NCSL has not advocated the creation of a new federal agency. House Ethics and Elections 1-28-02

	<p>administration or the study of elections.</p> <p>Commission has no regulatory authority.</p> <p>Advisory panels:</p> <ol style="list-style-type: none"> 1. Election Assistance Commission Standards Board comprised of state and local election officials from each state. 2. Election Assistance Board of Advisors that includes two members from NCSL and has the authority to nominate the first Executive Director of the Commission and to make formal recommendations and comments on proposed voluntary engineering and procedural performance standards. 	<p>member panel of experts in election law, election technology, election administration, the Constitution, or the history of the United States.</p> <p>One year after enactment, shall take over specified functions from the Justice Department including issuing standards and guidelines and administering grant programs. Justice Department remains responsible for enforcement.</p>	<p>3295 meets the following criteria, while S. 565 does not:</p> <ol style="list-style-type: none"> 1. No regulatory authority for the new Commission and 2. Formal role for representatives of NCSL in the makeup of the Commission.
<p>Grant Programs</p>	<p>Two separate grant programs targeted to states:</p> <ol style="list-style-type: none"> 1. Per-precinct allocation for replacement or upgrade of punch card technology and 2. Block grant for election assistance. <p>Each requires a state certification of eligibility. Funding is provided through a specified formula.</p> <p>Additional grant programs under the Act:</p> <ol style="list-style-type: none"> 3. Research and 	<p>Three separate grant programs:</p> <ol style="list-style-type: none"> 1. Grant to assist states in implementing mandates; 2. Incentive grant; 3. Accessibility grant. <p>Each requires federal approval of a detailed state application. Funding is provided under policies and criteria established by the Justice Department.</p> <p>Uniform and Nondiscriminatory Election Technology and Administration</p>	<p>NCSL supports a federal block grant for the following purposes:</p> <ol style="list-style-type: none"> 1. Improving election technology, systems and ballot design; 2. Facilitating voter registration, verification and maintenance of voter rolls; 3. Improving the accuracy and security of election procedures and vote counts; 4. Educating citizens on representative democracy and election processes and systems; 5. Providing greater

- development to make voting equipment fully accessible; and a
4. Pilot program to test voting equipment.

Punch Card Replacement/Upgrade

\$400 million with a 5% to 10% state match (depending on per capita income for each eligible precinct):

1. \$6,000 per precinct that applies to replace punch card technology or
2. \$2,000 per precinct that applies to upgrade punch card technology.

State must assure that it will continue to meet its duties under applicable provisions of federal law.

There is a second round of applications for local governments if the state does not apply.

Election Assistance Block Grant

\$2.25 billion distributed on the basis of voting age population. Minimum of 1/2 of 1 percent.

Requires certification that state has met specific grant conditions (specified in this chart).

Requirements Grant Program

\$3 billion distributed under policies and criteria established by the Justice Department.

Requires a state plan that includes a timetable for how the funds will be used to meet the requirements under this Act.

No action may be brought against the state on the basis of any information contained in the application or the state plan.

Specifies that the Attorney General shall pay each state that applies 100% of the costs of the activities described in its application, although it does not provide a statutory mechanism to guarantee funding.

Federal Election Reform Incentive Grant

\$400 million distributed under policies and criteria established by the Justice Department with a federal share that shall not exceed 80% unless the Attorney General determines a lack of state or local resources.

Requires a state application that includes a request for federal certification on the basis of a specific and detailed demonstration that the state is in compliance with federal laws or describing how it

access to voter registration and polling places especially for rural and disabled voters; and

6. Providing training and education opportunities for elections personnel.

NCSL opposes the delegation of authority, under S. 565, to the Justice Department to establish terms and conditions for grant funding.

NCSL is extremely concerned about the prospects for federal funding for grant programs that promise to reimburse states for the costs of implementing expensive federal mandates.

		<p>will use grant funds to meet this requirement. If a notice of noncertification is issued, it shall be transmitted along with a report identifying the relevant deficiencies in the state's election system or request for certification.</p> <p>Federal Election Accessibility Grant Program</p> <p>\$100 million distributed under policies and criteria established by the Justice Department with a federal share that shall not exceed 80% unless the Attorney General determines a lack of state or local resources.</p>	
<p>Access for the Disabled</p>	<p>Mandate: New voting systems must provide a practical and effective means for voters with disabilities to cast a secret ballot.</p> <p>Grant condition: One fully accessible system per precinct or polling place. If funds are spent on voting machines, one machine per polling place must be fully accessible.</p>	<p>Mandate: One voting system per polling place must provide the same opportunity for access and participation (including privacy and independence) as for other voters.</p> <p>Grant condition: Voting systems purchased with grant funds must meet federal voting systems standards for disability access if purchased after January 1, 2007.</p>	<p>NCSL supports the provisions of H.R. 3295 that allow states the flexibility to establish a practical and effective means for disabled voters to cast a secret ballot. NCSL opposes federal one-size-fits-all regulation.</p> <p>NCSL's Elections Reform Task Force recommended in its Final Report that states:</p> <ol style="list-style-type: none"> 1. Ensure nondiscriminatory equal access to the election system for all voters, including elderly, disabled, military and overseas voters; 2. Ensure voters have full accessibility to polling places; 3. Permit disabled voters to apply for permanent absentee voting status; and

			<ol style="list-style-type: none"> 4. Provide, upon request, a method of casting a secret ballot to all voters with disabilities; and 5. Educate election day workers about disability etiquette and how to best serve voters with disabilities.
Alternative Language Accessibility	No provision.	Mandate: Required if five percent of non-English speakers in that jurisdiction speak the language as their first language and if the illiteracy rate of that group is higher than the national illiteracy rate. Also required for jurisdictions that contain all or part of an Indian reservation if five percent of the voters within the Indian reservation meet these criteria.	NCSL's Elections Reform Task Force recommended in its Final Report that states ensure that ballot instructions can be read and understood with minimal assistance by people who have a low level of English proficiency.
Provisional Voting	<p>Mandate: In-precinct provisional voting for every voter who claims to be qualified to vote in the state or an alternative which achieves the same objective.</p> <p>Does not apply to states that conduct all votes by mail.</p>	<p>Mandate: Requires the issuance and processing of provisional ballots according to a specified process which includes:</p> <ol style="list-style-type: none"> 1. Notifying the individual that s/he is eligible to cast a provisional ballot; 2. Requiring a written affirmation that the individual is a registered voter and eligible to vote in that jurisdiction; 3. Mailing a notification letter within 30 days if the vote is not counted; 	<p>NCSL supports the provisions of H.R. 3295 that allow states the flexibility to determine the appropriate parameters for implementing provisional voting. NCSL opposes a federal one-size-fits-all prescription.</p> <p>NCSL's Elections Reform Task Force recommended in its Final Report that states:</p> <ol style="list-style-type: none"> 1. Provide a uniform method, by voting system, to allow voters to cast a provisional ballot at the polling place if their eligibility to vote is in question, thus resulting in the denial of their opportunity to

		<ol style="list-style-type: none"> 4. Providing a free-access system for the voter to ascertain whether his/her vote was counted and if not, the reason; 5. Providing written information to the voter. <p>Applies when a voter claims to be registered and eligible in a jurisdiction, but:</p> <ol style="list-style-type: none"> 1. their name does not appear on the official list of eligible voters for the polling place or 2. an election official asserts that the individual is not eligible to vote. 	<ol style="list-style-type: none"> 2. Have a uniform method to judge and count provisional ballots. <p>cast a standard ballot; and</p>
<p>Posting Information at the Polls</p>	<p>No similar provision.</p>	<p>Mandate: Requires at each polling place on the day of each election for federal office:</p> <ol style="list-style-type: none"> 1. A sample ballot; 2. The date of the election; 3. The hours that polling places will be open; 4. Instructions on how to vote, including how to cast a vote and how to cast a provisional ballot; 5. Special instructions for mail-in registrants and first-time voters to 	<p>NCSL supports state flexibility and opposes a federal one-size-fits-all prescription.</p> <p>NCSL's Elections Reform Task Force recommended in its Final Report that states adopt and disseminate a list of voter rights and responsibilities.</p> <p>See also NCSL's Task Force recommendations regarding voter education and pollworker training.</p>

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		<p>show identification; and</p> <p>6. General information on voting rights, including the right to cast a provisional ballot and instructions on how to contact appropriate officials if these rights are alleged to have been violated.</p> <p>States are required to comply with this provision as of the date of enactment of the Act.</p>	
<p>Statewide Voter Registration System</p>	<p>Mandate: Statewide voter registration system that is:</p> <ol style="list-style-type: none"> 1. Networked to every local jurisdiction in the state and 2. Has provisions for sharing data with other states. <p>Does not apply to states that do not have a voter registration requirement.</p>	<p>Mandate: Interactive computerized statewide voter registration list that:</p> <ol style="list-style-type: none"> 1. Contains the name and registration information of every legally registered voter in the state; 2. Assigns a unique identifier to each legally registered voter in the state; and 3. Is accessible to each state and local election official in the state. <p>Does not apply to states that do not have a voter registration requirement.</p> <p>Implementation required by January 1, 2004.</p>	<p>NCSL supports the provisions of H.R. 3295 that allow states the flexibility to determine the appropriate parameters for implementing a statewide voter registration system. NCSL opposes federal one-size-fits-all regulation.</p> <p>NCSL's Elections Reform Task Force recommended in its Final Report that:</p> <ol style="list-style-type: none"> 1. States should develop a statewide, electronic registration database; and 2. Registration databases should be constantly maintained to ensure the integrity of the process; 3. Registration databases should be easily accessible from all polling places; 4. States should improve communication between polling

			<p>places and central election offices; and</p> <p>5. Registration lists should not be used in any way that might discourage voter participation.</p>
<p>File Maintenance</p>	<p>Mandate: Remove those who do not vote in two or more consecutive general elections for federal office and do not respond to a notice.</p> <p>Must also enact safeguards to ensure that eligible voters are not removed in error.</p>	<p>Mandate: Remove names from the list in a manner that:</p> <ol style="list-style-type: none"> 1. is in accordance with the National Voting Rights Act; 2. is coordinated with state agency records on felony status; 3. is coordinated with state agency records on death; 4. ensures that the name of each registered voter appears in the list; 5. ensures that only voters who are not registered or are not eligible to vote are removed from the list; and 6. ensures that duplicate names are eliminated from the list. <p>Requires that the Justice Department promulgate guidelines no later than October 1, 2003.</p>	<p>NCSL supports the provisions of H.R. 3295 that allow states the flexibility to determine the appropriate parameters for implementing a statewide voter registration system. NCSL opposes federal one-size-fits-all regulation.</p> <p>NCSL's official policy on federal election reform legislation encouraged Congress to consider whether states should be given greater latitude under NVRA to remove ineligible voters from voter rolls.</p> <p>NCSL's Elections Reform Task Force recommended in its Final Report that:</p> <ol style="list-style-type: none"> 1. States should develop a statewide, electronic registration database; 2. Registration databases should be constantly maintained to ensure the integrity of the process; 3. Registration databases should be easily accessible from all polling places; 4. States should improve communication between polling places and central election offices; and 5. Registration lists should not be used in any way

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			that might discourage voter participation.
Voter Fraud	<p>No specific provision.</p> <p>Statewide voter registration database and purging requirement are designed to combat voter fraud.</p>	<p>Grant condition. State application must include an assessment of the susceptibility of elections to voting fraud and a description of how the state intends to identify, deter and investigate fraud.</p> <p>In addition, statewide voter registration database, purging requirement and requirement that first-time voters present identification are designed to combat voter fraud.</p>	<p>NCSL supports the provisions of H.R. 3295 that allow states the flexibility to determine the appropriate parameters for implementing a statewide voter registration system. NCSL opposes federal one-size-fits-all regulation.</p> <p>NCSL's Elections Reform Task Force recommended in its Final Report that:</p> <ol style="list-style-type: none"> 1. States should develop a statewide, electronic registration database; and 2. Registration databases should be constantly maintained to ensure the integrity of the process; 3. Registration databases should be easily accessible from all polling places; 4. States should improve communication between polling places and central election offices; and 5. Registration lists should not be used in any way that might discourage voter participation.
Requiring Voter Identification	No similar provision.	<p>Mandate: Requires voter identification for first-time voters who register by mail and did not provide identification as part of their mail-in registration application. Requires states to</p>	NCSL supports state flexibility and opposes a federal one-size-fits-all prescription.

		<p>permit any voter who desires to vote in person, but does not provide identification, to cast a provisional ballot.</p> <p>States are required to comply with this provision as of the date of enactment of the Act.</p>	
<p>Overvote Notification and Error Correction</p>	<p>Mandate: New voting systems must give voters the opportunity to correct errors before their vote is cast.</p> <p>Mandate: If a state uses a system that provides an opportunity for error correction, it must ensure conditions that assure privacy.</p>	<p>Mandate: Voting systems must notify the voter of overvotes and the effect of casting overvotes. Also required to provide voters with an opportunity to correct the ballot, including the issuance of a replacement ballot if necessary.</p> <p>States or localities with a punch card or paper ballot system can comply by:</p> <ol style="list-style-type: none"> 1. Establishing a voter education specific to that voting system to notify voters of the effect of casting multiple votes; and 2. Providing the voter with an opportunity to correct the ballot before it is cast and counted in a manner that preserves the privacy of the voter and the confidentiality of the ballot. 	<p>NCSL supports state flexibility and opposes a federal one-size-fits-all prescription.</p> <p>NCSL's Elections Reform Task Force recommended in its Final Report that states:</p> <ol style="list-style-type: none"> 1. Adopt uniform standards for maintenance, operation, counting (including what constitutes a vote), security, verification, accuracy, and ballot design for each type of voting system used in the state; 2. Monitor the emergence of new technologies that provide alternative methods for conducting elections and implement those which will improve the election process; and 3. Collect and archive election data, including error rates, undervotes and overvotes for each voting system and the number of persons presenting themselves to vote.
<p>Defining A Vote</p>	<p>Mandate: Statewide standards that define</p>	<p>No provision.</p>	<p>NCSL's Elections Reform Task Force</p>

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	<p>what constitutes a vote on each category of voting equipment.</p>		<p>recommended in its Final Report that states adopt uniform standards for maintenance, operation, counting (including what constitutes a vote), security, verification, accuracy, and ballot design for each type of voting system used in the state.</p>
<p>Federal Voluntary Voting System Standards</p>	<p>Grant condition: States that receive funds must either adopt the federal voluntary voting systems standards or establish their own state standards which, at a minimum, ensure that new technology has the audit capacity to produce a record for each ballot cast.</p> <p>Committee under the auspices of NIST develop an initial recommendation for standards; advisory boards that include representatives of state and local officials provide formal comment prior to Commission approval.</p>	<p>Grant condition. Requires voting systems purchased with grant funds meet federal voting systems standards for disability access if purchased after January 1, 2007.</p> <p>Directs the FEC to promulgate standards revising its voting systems standards so that they conform to the requirements in this Act. Requires a review of these standards at least once every four years.</p>	<p>NCSL's official policy on federal election reform legislation supports increased funding for the FEC Office of Election Administration for the development of voluntary equipment standards and the dissemination of election-related statistics and information.</p>
<p>Audit Capacity</p>	<p>Grant condition: States that receive funds must either adopt the federal voluntary voting systems standards or establish their own state standards which, at a minimum, ensure that new technology has the audit capacity to produce a record for each ballot cast.</p>	<p>Mandate: All voting systems must produce a record with an audit capacity.</p>	<p>NCSL's Elections Reform Task Force recommended in its Final Report that states:</p> <ol style="list-style-type: none"> 1. Adopt uniform standards for maintenance, operation, counting (including what constitutes a vote), security, verification, accuracy, and ballot design for each type of voting system used in the state and 2. Monitor the emergence of new technologies that provide alternative methods for conducting elections and implement those

			which will improve the election process.
Error Rates	<p>Grant condition: States that receive funds must establish a uniform statewide benchmark for voting system performance and a requirement for local jurisdictions to report relevant data.</p>	<p>Mandate: Error rate must not exceed standards established by the Federal Election Commission.</p>	<p>NCSL's Elections Reform Task Force recommended in its Final Report that states:</p> <ol style="list-style-type: none"> 1. Adopt uniform standards for maintenance, operation, counting (including what constitutes a vote), security, verification, accuracy, and ballot design for each type of voting system used in the state; 2. Monitor the emergence of new technologies that provide alternative methods for conducting elections and implement those which will improve the election process; and 3. Collect and archive election data, including error rates, undervotes and overvotes for each voting system and the number of persons presenting themselves to vote.
Overseas Voters	<p>Mandate: Safeguards to ensure that absent uniformed services voters and overseas voters have the opportunity to vote and have their votes counted.</p> <p>Mandate: States required to:</p> <ol style="list-style-type: none"> 1. Establish a single office to provide 	<p>No provision. Requirement that first-time voters provide identification does not apply to overseas voters eligible to vote absentee under existing federal laws.</p>	<p>NCSL's Elections Reform Task Force recommended in its Final Report that states ensure nondiscriminatory, equal access to the election system for all voters, including elderly, disabled, military and overseas voters.</p>

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	<p>information regarding voter registration and absentee ballot procedures;</p> <ol style="list-style-type: none"> 2. Use the federal post card form for simultaneous voter registration application and absentee ballot application; 3. Accept and process voter registration and absentee ballot applications received not less than 30 days before the election; 4. Comply with requests for an absentee ballot for each election for federal office held during that year; and 5. Submit a report after each general election on the number of ballots transmitted and received. <p>If a state requires an oath or affirmation, it must use a standard oath prescribed by the Department of Defense.</p>		
<p><i>Voter Education, Poll Worker Training</i></p>	<p>Grant condition: State must provide voter education, poll worker training, and training for agency personnel in the requirements of the National Voter Registration Act.</p>	<p>No provision.</p>	<p>NCSL's Elections Reform Task Force recommended in its Final Report that:</p> <ol style="list-style-type: none"> 1. States should develop more extensive programs to train election day workers to properly interact with voters; 2. States should remove barriers to the recruitment of election day workers; 3. States should assist in funding the recruitment, training and retention of election day workers;

			<ol style="list-style-type: none"> 4. Election day workers should be educated about disability etiquette and how to best serve voters with disabilities; 5. States should establish a policy requiring a sufficient number of election day workers at each polling place; 6. States should place a renewed emphasis on voter education; 7. If necessary, state funds should be available to assist units of government to carry out the critical mission of educating voters; 8. Public resources spent on voter education should be expended fairly and in a politically neutral manner; and 9. When voting equipment or procedures are changed, states should direct additional voter education efforts toward ensuring familiarity with the new equipment or procedures.
<p>Help America Vote College Program</p>	<p>\$5 million to encourage college students to serve as nonpartisan poll workers.</p>	<p>No similar provision.</p>	<p>NCSL's Elections Reform Task Force recommended in its Final Report that states:</p> <ol style="list-style-type: none"> 1. Remove barriers to the recruitment of election day workers; 2. Assist in funding the recruitment, training and retention of election day workers; and 3. Establish a policy requiring a sufficient number of election day

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			workers at each polling place.
Help America Vote Foundation	Charters a nonprofit corporation to place high school students as nonpartisan poll workers.	No similar provision.	NCSL's Elections Reform Task Force recommended in its Final Report that states: <ol style="list-style-type: none"> 1. Remove barriers to the recruitment of election day workers; 2. Assist in funding the recruitment, training and retention of election day workers; and 3. Establish a policy requiring a sufficient number of election day workers at each polling place.
Compliance With Existing Federal Laws	Mandate: Comply with existing applicable requirements of federal law.	Grant condition: State plan must contain assurances that the state will comply with existing federal laws. ¹ Separate incentive grant requires a specific and detailed demonstration of compliance or a specific and detailed demonstration of the intended use of grant funds for this purpose.	NCSL did not consider amending existing federal laws that apply to elections other than to advise that Congress look into re-opening the NVRA.
Supplantation/ Retroactive Payments	Federal funds must not supplant funds provided under existing programs funded in the state. Does not provide for retroactive payments.	States must use a non-federal source for the state match. Permits retroactive payments to states that incurred costs after January 1, 2001.	
Audit/Report Requirement	All funds are subject to audit. Each grant is subject to one mandatory audit.	All funds are subject to audit. Each Accessibility Grant is subject to one mandatory audit. In addition, recipients of each grant must submit an annual report.	

<i>Criminal Penalties</i>	No provision. However, the legislation does consider a poll worker who urges or encourages a voter to return to the voting booth to cast votes for every office to have intimidated, threatened or coerced the voter for the purpose of interfering with the voter's right to vote as the voter may choose.	Establishes criminal penalties for conspiracy to deprive voters of a fair election and for providing false information in registering and voting.	
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