



STATE OF MICHIGAN
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DEPARTMENT OF STATE
LANSING

March 14, 2003

**Help America Vote Act of 2002
(H.R. 3295/P.L. #107-252)**

**Summary of Title I,
Title II and Title III**

This report summarizes Title I, Title II and Title III of the Help America Vote Act of 2002 (HAVA). The Help America Vote Act of 2002 and a variety of related reference materials can be found on the website maintained by the Federal Election Commission <www.fec.gov/hava/hava.htm>.

**Election Administration and Replacement of Voting Equipment Grants
(Title I)**

Title I authorizes the General Services Administration (GSA) to administer \$650 million in payments to (1) implement election administration improvements and (2) replace punch card voting systems and lever voting machines.

Election administration improvements (\$325 million): To be eligible for the payment, the Governor, in consultation and coordination with the Secretary of State, must notify the GSA no later than April 29, 2003 that the funds will be used in accordance with the Act. States are guaranteed a minimum payment of \$5 million. The remaining funds are allocated according to the state's voting age population. (Michigan is eligible for approximately \$9.9 million.) Fundable activities include:

- (1) Complying with the federal election requirements provided under Title III.
- (2) Improving elections conducted to fill federal offices.

- (3) Educating voters concerning voting procedures, voting rights and voting technology.
- (4) Training election officials, poll workers and election volunteers.
- (5) Developing the State Plan which must be filed by the state under Title II to qualify for “requirements payments.”
- (6) Improving, acquiring, leasing, modifying or replacing voting systems and technology and methods for casting and counting votes.
- (7) Improving polling place accessibility and increasing the number of polling places.

Replacement of punch card voting systems and lever voting machines (\$325 million):

To be eligible for the payment, the state must certify no later than April 29, 2003 that the funds will be used to replace the state’s punch card voting systems and lever voting machines in advance of the November 2, 2004 general election. (An extension through the first federal election conducted after January 1, 2006 can be requested for good cause.)

Each state is eligible to receive \$4,000.00 for each “qualifying precinct.” A “qualifying precinct” is a precinct that used a punch card voting system or lever voting machines to administer the November 7, 2000 general election. (Michigan is eligible for approximately \$6.8 million.) If the total claimed exceeds the \$325 million appropriation, the payments will be proportionately reduced. If the state fails to meet the voting equipment replacement deadline, the state must return the funds received for any non-compliant precincts.

Election Assistance Commission (Title II)
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Title II establishes a four-member “Election Assistance Commission” (EAC). Members are appointed by the President with Senate approval. The functions of the EAC include:

- (1) Maintaining a clearinghouse of information and administering the voluntary voting system “guidelines.”
- (2) Performing duties related to the testing and certification of voting equipment and software.

- (3) Conducting studies and promoting effective election administration.
- (4) Administering the voluntary guidelines related to the minimum election requirements under the Act.
- (5) Administering the Election Assistance Program and the Help America Vote Program as established under the Act.

The Election Assistance Commission is authorized to hold hearings, request information from federal agencies, use postal services and contract with private groups and federal agencies.

Boards and commissions established under the Election Assistance Commission include the following:

- (1) An Election Assistance Commission Standards Board composed of 110 state and local officials. (Secretary of State Terri Lynn Land and Ms. Tonni Bartholomew, Clerk of the City of Troy, represent Michigan on the Commission.)
- (2) An Election Assistance Board of Advisors composed of 37 members representing state and local groups including two members appointed by the National Governors Association. (Mr. Christopher M. Thomas, Michigan Director of Elections, represents the National Association of State Election Directors on the Board.)
- (3) A Technical Guidelines Development Committee composed of members of the Standards Board, Board of Advisors and other groups.

The Boards and Commissions are responsible for developing and approving voluntary guidelines for the improvement of election administration. All recommendations must be adopted by the Election Assistance Commission.

Election Assistance Grants (Titles II and III)

The Election Assistance Commission is required to make election assistance “requirements payments” to qualifying states. Appropriations authorized under this section include \$1.4 billion for FY 2003, \$1 billion for FY 2004 and \$600 million for FY 2005. (\$830 million was appropriated under this section for FY 2003. The funds “authorized” for each fiscal year must be appropriated under separate action before the funds are available to the states.)

The funds are allocated according to the state's voting age population with a guaranteed minimum payment equal to ½ of 1% of the total appropriation for each year. (Michigan is eligible for approximately \$28 million this fiscal year.)

To qualify for the funds, a state must submit a "State Plan" to the Election Assistance Commission. The plan must address 13 different specified elements. The state's chief election official is responsible for appointing a public committee to provide input on the plan. The plan must be released for public comment at least 30 days prior to the plan's submission. The 13 elements which must be addressed under the plan are summarized below:

- (1) ***How the state will use the requirements payments:*** It has been suggested that this section of the plan should include a multi-year timeline which details how the state will meet the relevant requirements of Title III. Further, the section must contain enough detail to enable the public to understand what can be expected from the proposed actions.
- (2) ***How the requirements payments will be distributed and monitored:*** Considerations will include the fund distribution method (e.g., formula grants; project grants) and how the use of the funds will be monitored.
- (3) ***Education and training:*** Well designed education and training programs will be necessary to implement HAVA and assist local election officials. It has been suggested that this section of the plan should identify target audiences (voters, election officials and election inspectors), training goals and those responsible for developing and providing the training.
- (4) ***Voting system guidelines and processes:*** Must describe how the state will meet the voting system requirements provided under Sec. 301. It has been suggested that this section of the plan should address the mechanism the state will use to conform to Sec. 301 (e.g., certification program and/or state purchase); how existing voting systems not in compliance with Sec. 301 will be replaced or brought into compliance; how the state will satisfy the requirements of Sec. 301(a)(6) with a definition of what constitutes a vote; and how the state will apply the concept of "voting system" defined in Sec. 301(b)(1).
- (5) ***Election fund:*** Must address how the state will establish the fund and how the fund will be managed (i.e., expenditure controls, audit functions, investments, etc.).
- (6) ***Budget for Title III requirements:*** Must include a needs analysis (e.g., what needs replacing, what new activities will be launched); the plan for meeting those needs; and the years in which the funds will be expended.

- (7) ***Maintenance of effort:*** Must detail how much the state spent on activities that will be funded by the requirements payments in the fiscal year which ended prior to November 2000 (i.e., October 1, 1999 through September 30, 2000) and a description of how the state intends to continue the same level of support with state resources.
- (8) ***Performance goals and measures for state and local units of government:*** Must detail the process of adopting performance goals and measures – not the goals and measures themselves. It has been suggested that this section of the plan should include timetables for meeting each element of the plan; descriptions of the criteria the state will use to measure performance; the process used to develop the criteria; and an explanation of the official responsible for ensuring that each performance goal is met.
- (9) ***Complaint procedure:*** Must provide “a description of the uniform, nondiscriminating state-based administrative complaint procedure in effect under section 402.”
- (10) ***Use of Title I funds:*** Must provide a description of how any funds received under Title I “will affect the activities proposed to be carried out under the plan” (i.e., the estimated amount of Title I funds that will be spent on each Title III activity in the plan).
- (11) ***Management of plan:*** It has been suggested that this section of the plan should detail those responsible for managing the plan; how the performance monitoring functions required under #8 above will be incorporated in the management of the plan; the reports and audits required; and how changes in the plan will be effected.
- (12) ***Changes from previous year’s plan:*** No applicability in first plan.
- (13) ***The planning committee and its procedures:*** Must include an overview of the committee’s activities; a listing of the committee members; provisions made for public input; and actions taken as a result of public input.

In addition to the submission of the plan, the state must self-certify that it has developed procedures for implementing a complaint process as required under the Act; is in compliance with any and all impacting federal laws; will not use the funds for purposes inconsistent with the Act; and has appropriated state funds equal to 5% of the amount of funds to be spent.

Grants to Ensure Access for the Disabled (Title II)

The U.S. Secretary of Health and Human Services is authorized to administer grants to state and local governments to make polling places accessible to the disabled including the blind and visually impaired. Grants may also be used to provide information on the accessibility of polling places.

Payments are to be made no later than six months after the enactment date of the Act. Authorized appropriations: \$50 million for FY 2003; \$25 million for FY 2004; and \$25 million for FY 2005. The appropriated funds will remain available until expended without fiscal year limitation. (\$13 million was appropriated under this section for FY 2003.)

To receive funding, a state or local unit must submit an application to the secretary describing the activities for which assistance is sought. The state must submit a report to the secretary no later than six months after the end of each fiscal year on the activities carried out with the funds.

Other Grant Programs (Title II)

Grant programs administered by the Election Assistance Commission: \$20 million authorized for FY 2003 on voting technology improvements; \$10 million authorized for FY 2003 for pilot programs for the testing of voting equipment and technology; and \$200,000.00 for FY 2003 to the National Student and Parent Mock Election Organization. (No appropriations were made for programs in FY 2003.)

Grant program administered by the U.S. Secretary of Health and Human Services: \$10 million authorized for FY 2003, FY 2004, FY 2005 and FY 2006 for protection and advocacy systems of each state to ensure full participation for the disabled in the electoral process. (\$2 million was appropriated under this section for FY 2003.)

Uniform and Non-Discriminatory Election Technology and Administration Requirements (Title III)

Voting system standards: Compliance with the following standards is required by January 1, 2006. The Act stipulates that a state is not prohibited from using any voting system employed to administer the November 7, 2000 general election provided that the voting system meets the requirements of the Act.

- (1) The voter must be permitted to verify his or her ballot before the ballot is cast.
- (2) The voter must be provided the opportunity to change his or her ballot before the ballot is cast.
- (3) The voter must be notified before the ballot is cast if he or she has “overvoted” an office on the ballot. In addition, the voter must be provided an opportunity to correct such errors. States using paper ballots, punch card ballots or mail-in ballots may meet this requirement by establishing a voter education program which notifies the voter of the effect of “overvoting” an office and provides the voter with instructions on how to correct such errors.
- (4) The system must have manual audit capacity including a permanent paper record.
- (5) The system must be accessible to the disabled.
- (6) The system must provide alternative language accessibility.
- (7) The system must comply with Federal Election Commission error rate standards in effect on the enactment date of the Act.
- (8) Each state must adopt uniform and nondiscriminatory standards defining what constitutes a vote and what will be counted as a vote.

Provisional voting and voting information requirements: The state must enact provisional voting laws by January 1, 2004. The voter is required to sign a written affirmation that he or she is a registered voter and is eligible to vote in the election. A state or local election official must then verify the ballot. The state must provide written notice to the voter through a free access system (toll free telephone or Internet) that the ballot was or was not counted and, if not, why the ballot was not counted.

States must also post voting information in each polling place including: a sample ballot; voting instructions, including provisional voting instructions; mail-in and first-time voting instructions; voting rights information; and state and federal voting fraud laws.

Individuals voting after the closing of the polls pursuant to a federal or state court order issued under state law in effect ten days or more before the date of the election must cast a provisional ballot.

Computerized statewide voter registration list: Each state election official (Secretary of State) must establish a single, uniform, centralized, interactive computerized statewide voter registration list no later than January 1, 2004. (States may, for good cause, self-certify that additional time is needed and seek a waiver until January 1, 2006.)

The list must assign a unique identifier to each voter and must be the single system in the state for storing and managing the list of registered voters; be coordinated with other state agencies and state databases; be immediately accessible by state and local election officials; and serve as the official voter registration list for federal elections.

Each state must maintain the list by removing ineligible voters and the deceased; providing adequate security measures to prevent unauthorized access to the list; and updating the database.

Anti-Fraud and Voter Identification Procedures (Title III)

Verification of voter registration: An individual registering to vote must provide a driver's license number or the last four digits of his or her Social Security number. (If an applicant has neither form of identification, the state must assign a voter registration number.) A state election official and the state motor vehicle authority must then match the information in the voter registration database with information in the motor vehicle database. The state motor vehicle authority and the Social Security Administration are also required to enter into an agreement verifying the accuracy of the voter registration information.

Mail-in registration: For first-time voters registering by mail, each state must require the individual to provide photo identification, or a copy of a utility bill, bank statement, government check, paycheck, or other government document showing the applicant's name and address. Identification must be provided when registering, when voting, or must accompany a mail-in ballot.

The state is required to comply with mail-in registration requirements by January 1, 2004. Individuals registering to vote by mail must submit the required identification beginning in January 1, 2003.

An individual who desires to vote by mail or in person who does not meet the above requirements may cast a provisional ballot.

States may satisfy the identity verification requirement by electronically comparing the driver license number provided by the voter registration applicant with the driver license number maintained for the individual in the state's driver license file. Michigan currently makes such comparisons through the Qualified Voter File system. As an alternative, the identify verification requirement can be satisfied through the electronic verification of the last four digits of the voter registration applicant's Social Security Number.