

# State of Wisconsin\Government Accountability Board

Post Office Box 2973  
17 West Main Street, Suite 310  
Madison, WI 53701-2973  
Voice (608) 266-8005  
Fax (608) 267-0500  
E-mail: gab@wi.gov  
<http://gab.wi.gov>



KEVIN J. KENNEDY  
Director and General Counsel

May 21, 2008

U.S. Election Assistance Commission  
1225 New York Avenue N.W., Suite 1100  
Washington, DC 20005

Dear Chairwoman Rodriguez and Commissioners:

I am writing to provide additional comment on the issue of Maintenance of Effort (MOE). I note the Commission staff cites the Wisconsin State Plan, along with several other state plans, in support of the position that HAVA requires states to account for local spending on elections in the state MOE restriction. This is a misstatement of our position.

This is the language cited from our state plan:

*Wisconsin will maintain the level of state expenditures for HAVA requirements at the same or greater level as the State spent in the fiscal year (FY 2) ending before the November 2000 election. In that fiscal year, the State Elections Board spent no funds on activities related to HAVA requirements. The agency's election-related budget consisted of two Full Time Equivalent (FTE) elections specialists. These positions have been maintained despite a reduction in the agency staffing level as a result of the current fiscal crisis.*

*The positions will continue to be funded with state funds. All HAVA payments will be used to augment the preexisting level of state funding for election administration. Any payments distributed to local government will be conditioned on a continuing maintenance of effort to ensure that federal funds do not replace existing local government expenditures on election administration.*

The first sentence clearly states: "Wisconsin will maintain the level of state expenditures for HAVA requirements at the same or greater level as the State spent in the fiscal year ... ending before the November 2000 election." The sentence speaks to state spending for HAVA requirements. This is consistent with the language from HAVA on MOE. HAVA Section 254 (a)(7).

The reference to local maintenance of effort in the second sentence of the second paragraph speaks to conditions Wisconsin would place on any payments distributed to local governments. The reference is directed to local election spending. It is not directed to local election spending on HAVA requirements.

This does not support the contention that Wisconsin believes its local election administrators are subject to the state MOE requirements set out in HAVA. As Wisconsin's chief election official, I am affirmatively stating for the record, it is our position the HAVA MOE only applies to state expenditures on HAVA Title III requirements.

In the second sentence of the excerpt from the Wisconsin State Plan, we clearly articulate no State funds were spent on HAVA requirements in the base fiscal year. In fact, no local funds were spent on HAVA requirements in the base fiscal year either.

The state has the right to set conditions on any distribution of HAVA payments to local election administrators. It is required to monitor any distribution of HAVA requirements payments to local government HAVA Section 254 (a)(2). There is no reference to MOE in this provision. Our monitoring of any distribution of HAVA requirements payments does not implicate the state MOE requirement.

I advised you in my April 16, 2008 correspondence on this issue, the statutory language concerning the MOE requirement is clear in its reference to state expenditures. The analysis in the staff memorandum goes to extreme lengths to create ambiguity where none exists. The reference to a state's voting age population as somehow creating ambiguity in the MOE section is tortuous reasoning at best. The Commission is not well served relying on the staff analysis.

I suggest the Commission revisit and rewrite the policy articulated in EAC Advisory 07-003-A. This is the best manner to provide reliable guidance to state election officials and the groups who have weighed in on the proposal to correct the policy.

The concerns articulated by the civil rights, voting rights and civic organizations in their April 29, 2008 letter and the League of Women Voters, Project Vote and the Brennan Center in their April 15, 2008 letter miss the point. The states are not asking to exempt local government from supplanting past spending on federal election administration. We are asking the Commission to avoid imposing a legally unsupported policy to divert limited state and local funds to documenting local MOE activity when it is not required by HAVA.

The limited resources of state and local government are best utilized to promote the goals of these organizations to maintain and advance the fairness and transparency of the administration of federal elections, than to spend funds identifying and documenting past expenditure levels.

On behalf of the Government Accountability Board, the 1,923 local Wisconsin election officials and their staff, I request you rewrite the policy articulated in EAC Advisory 07-003-A to eliminate this misallocation of limited election administration resources.

If you have any questions please contact me directly at 608-266-8087 or [kevin.kennedy@wi.gov](mailto:kevin.kennedy@wi.gov)

**Government Accountability Board**



Kevin J. Kennedy  
Director and General Counsel

C: Government Accountability Board Members  
Members, Wisconsin Congressional Delegation