



U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

May 2, 2007

Honorable Kurt Browning  
Secretary of State  
R.A. Gray Building  
500 S. Bronough, Suite 100  
Tallahassee, FL 32399

**Via Facsimile Transmission & U.S. Mail**

RE: Use of HAVA funds

Dear Secretary Browning:

The State of Florida has requested a formal opinion from the U.S. Election Assistance Commission (EAC) regarding the State's desire to use funding distributed under the Help America Vote Act of 2002 (HAVA) for the following purposes: 1) to replace touch screen voting equipment – previously funded in part by HAVA funds – with optical scan voting equipment, 2) to retrofit accessible voting units (touch screen systems) with voter verifiable paper audit trails (VVPAT), and 3) to fund the replacement of touch screen voting systems used in early voting with ballot on demand systems. By this letter, EAC is providing its opinion on each of the three expenditures listed above.

### **BACKGROUND**

As you are aware, there are three funding programs under which the EAC or its predecessor, the General Services Administration (GSA), distributed money to the States to implement the provisions of HAVA. Those sources are Section 101, Section 102 and Section 251 funds.

#### **Permissible Uses of HAVA Funds**

The funds received by a state under Section 101 can be used for the following purposes:

- A. Complying with the requirements under title III.
- B. Improving the administration of elections for Federal office.
- C. Educating voters concerning voting procedures, voting rights, and voting technology.
- D. Training election officials, poll workers, and election volunteers.
- E. Developing the State plan for requirements payments to be submitted under part 1 of subtitle D of title II.
- F. Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.

G. Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.

H. Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

Section 102 funds can be used ONLY for the purposes of replacing punch card and lever voting systems with voting systems that comply with Section 301(a) of HAVA.

Section 251 funds can be used to implement any of the Title III requirements, including purchasing compliant voting systems, implementing provisional voting, providing information to voters in the polling place, developing and implementing a statewide voter registration list, and identifying voters. In addition, states and local governments can use HAVA funds to improve the administration of elections for Federal office when the State certifies that one of two conditions is met: (1) the state has met the requirements of Title III; or (2) the state notifies EAC of its intention to use an amount not to exceed the amount of the minimum payment that the state either did or could have received under the Section 252 formula for that purpose.

In addition to the restrictions on the uses of funds imposed by HAVA, when these funds were distributed by either GSA or EAC, they were made subject to several circulars developed by the Office of Management and Budget, specifically OMB Circulars A-87 (governs the use of federal funds to purchase goods for state and local governments), A-102 (governs the management of federal funds for state and local governments), A-122 (governs the use of federal funds to purchase goods for non-profits) and A-133 (dealing with audits). These circulars further restrict the appropriate uses of Federal funds requiring generally that costs paid for by HAVA funds are allowable, allocable (directly or through an indirect cost rate), and reasonable.

#### Allowable Costs

A cost is allowable if it is necessary for the proper and efficient performance and administration of the federally sponsored program. Costs that fall within the specifically identified uses of HAVA funds in either Sections 101, 102 or Title III are allowable.

#### Allocable Costs

A State can allocate an expense by charging only a portion equal to the percentage of use for HAVA related purposes to the HAVA grant. This can be accomplished by either using only that percentage of HAVA fund per unit cost or by seeking reimbursement from the other departments within the state for their portion of the usage. The question of allocability arises generally in one of two circumstances. First, is the cost allocable to the program to which it is

billed? The fact that a cost is allowable under one or more funding programs of HAVA does not mean that it is allocable to each and every program. For example, if an expense is not directly related to meeting any of the Title III requirements, it is allocable only to Section 101 funds and Section 251 funds pursuant to the provisions of Section 251(b) that allow for the use of Title II funds for the improvement of the administration of elections for federal office only up to the minimum payment amount. Second, is the cost allocable to benefit a Federal election? Most of the uses identified in HAVA require the funds to be used to benefit a Federal election. Thus, costs that strictly benefit a state or local election are not allocable to the HAVA funding programs.

#### Reasonable Costs

A State must also conduct some assessment as to whether the costs are reasonable. This is done by determining that the cost is justified based upon factors such as the frequency of use, leasing versus purchasing, and actual cost for the good or service.

#### FACTS RELATED TO FLORIDA'S SITUATION

Currently pending in the Florida state legislature is a bill that would direct the State to replace all touch screen voting systems used on Election Day and in conjunction with early voting with optical scan voting equipment. In addition, this bill would require the retrofit of touch screen systems that are needed to provide accessibility to disabled voters with VVPAT units. The State of Florida seeks an opinion as to whether it can use remaining HAVA funds to finance these purchases and replacements.

Your request focuses exclusively on the use of Section 251 funds that Florida has remaining at this time. According to information provided by your office, Florida has approximately \$91 million of Section 251 funds available in its election fund. Furthermore, you anticipate the cost of replacing touch screen systems with optical scan voting equipment to be \$22,861,850; the cost to retrofit touch screen system with VVPATs to be \$7,816,210; and the cost to replace early voting touch screen systems with ballot on demand systems to be \$5,000,000.

You also provided information regarding the amount of Federal money distributed under HAVA that was previously used to partially fund the purchase of voting equipment that is now intended to be replaced. You explained that in fiscal years 2001 and 2002 payments were made on a per-polling place basis to each county in Florida for the purchase of voting equipment. The State later reimbursed itself in the amount of \$11,581,377 for these payments from HAVA Section 102 funds that were distributed to it. Specifically, based on the total amount of Federal funding, \$11,581,377 the following counties that currently use touch screen voting equipment were paid the following amounts in fiscal years 2001 and 2002 for the purchase of those systems:

COUNTY	FY 2001	FY 2002
Broward	\$556,987	\$556,987
Charlotte	\$56,780	\$56,780
Collier	\$86,522	\$86,522
Hillsborough	\$288,408	\$288,408
Indian River	\$34,248	\$34,248
Lake	\$77,510	\$77,510
Lee	\$135,191	\$135,191
Martin	\$36,051	\$36,051
Miami-Dade	\$556,086	\$556,086
Nassau	\$37,853	\$37,853
Palm Beach	\$478,577	\$478,577
Pasco	\$118,968	\$118,968
Pinellas	\$310,939	\$310,939
Sarasota	\$127,981	\$127,981
Sumter	\$43,261	\$43,261
<b>TOTAL</b>	<b>\$2,945,362</b>	<b>\$2,945,362</b>

Thus, over the two fiscal years, a total of \$5,890,724 in Federal funds was used to reimburse these payments to the affected counties.

Florida has certified to EAC that it has met all of the requirements of Title III of HAVA, including purchasing HAVA-compliant voting equipment. Thus, Florida may use all of the remaining Section 251 funds to meet the purposes of Title III or for activities that improve the administration of elections for Federal office.

**ANALYSIS OF FLORIDA QUESTIONS**

Florida may use its remaining HAVA funds to finance the retrofit of touch screen voting equipment with VVPATs. Florida also may use HAVA funds to finance that portion of the cost to replace touch screen voting systems with optical scan voting systems that has not previously been financed with Federal HAVA funds.

Retrofit of Touch Screen Voting Systems with VVPATs

EAC has previously determined that VVPATs are not required by Section 301(a) of HAVA. See Question 12, HAVA Funding FAQs. Therefore, purchase of these pieces of equipment does not meet the requirements of Title III. However, EAC has determined that they are an improvement to the administration of elections for Federal office. This means that a State may use HAVA funds distributed under Sections 101 and 251 (when appropriate certifications are made) to fund activities that are an improvement to the administration of elections for Federal office, including the purchase of VVPATs to retrofit existing voting equipment.

