

WEST VIRGINIA STATE PLAN

HELP AMERICA VOTE ACT OF 2002 (HAVA)

THIRD REVISED AND UPDATED VERSION, 2018



Mac Warner

West Virginia Secretary of State
State Capitol Building
Charleston, WV 25305
Toll-Free: 1-866-SOS-VOTE
Office: 1-304-558-6000
Fax: 1-304-558-0900
Email: Elections@wvsos.gov
Website: www.sos.wv.gov

INTRODUCTION

In West Virginia, the Secretary of State serves as the chief election official, and the county clerks of the fifty-five counties administer elections at the federal, state, and county levels. Collaboration between the Secretary of State and the county officials is essential to the conduct of successful elections. In addition to fulfilling federal election responsibilities, the networking initiatives between the Office of the Secretary of State and all county officials support 1.22 million voters and strive for successful elections to be conducted on state, county and municipal levels of government.

Since 2001, West Virginia has taken significant steps toward election reform through new programs that encourage voter participation, education and clean elections. In addition, legislation was passed in the following areas to meet the requirements of HAVA: (1) improving accessibility for disabled and disadvantaged voters; (2) implementing a uniform complaint handling procedure; (3) implementing a Statewide Voter Registration System (SVRS); (4) updating voting technology; and (5) developing voting system testing and certification standards. Beginning in 2017, the Office of the Secretary of State has responded to the increasing cyber security threats by establishing additional procedures and training to ensure accurate voting tallies and voter confidence at all levels of the election process.

Implementing these state legislative reforms and the Help America Vote Act of 2002 (HAVA) required a considerable effort and resources from both the Secretary of State's Office and the county clerks. Moving ahead, West Virginia counties will need additional voting system upgrades, additional training programs and redesigned security processes. Additionally, the success of the State's election reform efforts requires implementation at an appropriate point in the election cycle, so that the counties may utilize new processes in a timely manner.

The major technical change in the 2018 update West Virginia's HAVA State Plan is modifying the previously existing "county loan fund" into a "county grant and loan fund," specifically intended to provide the counties up to a 50% matching grant for voting equipment and up to 85% matching grant for necessary physical security upgrades, electronic poll books, and accessibility grants. The change is necessary to provide counties the required funding to improve election administration.

This State Plan is organized as specified in HAVA Section 254. Each Section of this document corresponds to a subsection of Section 254 and addresses a State Plan requirement specified in HAVA. The plan outlines program milestones to address large-scale system or procedural changes.

Sincerely,

Mac Warner
Secretary of State

WEST VIRGINIA STATE PLAN – 2018

XXXXXXXX, XX, 2018 XXXXXXXX, XX, 2018
Approved for Public Comment Final Version Adopted
(Not less than 30 days prior to Final Version) (Not less than 30 days after approval of Advisory Committee)

TABLE OF CONTENTS

STATE PLAN REQUIRED ELEMENTS (HAVA §254)

Section I: Title III Requirements and Other Activities	5
1.1 <i>How the State will use the requirements payment to meet the requirements of Title III, and, if applicable under Section 251(b)(2), to carry out other activities to improve the administration of elections. -- HAVA §254 (a)(1)</i>	5
Section II: West Virginia’s Distribution of Requirements	6
2.1 <i>How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of—</i> <i>(A) The criteria to be used to determine the eligibility of such units or entities for receiving the payment; and</i> <i>(B) The methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8)</i>	6
2.2 HAVA Grant Board	7
Section III: Voter Education, Election Official Education and Training, Poll Worker Recruitment and Training	
3.1 <i>How the State provides for programs for voter education, election official education and training, and poll worker training which assists the State in meeting the requirements of Title III. -- HAVA §254 (a) (3)</i>	9
Section IV: Voting System Guidelines and Processes	11
4.1 <i>How the State adopted a voting system guidelines and processes to be consistent with the requirements of Section 301. -- HAVA §254 (a) (4)</i>	11
Section V: West Virginia HAVA Fund Management	12
5.1 <i>How the State established a fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management. -- HAVA §254 (a) (5)</i>	12
Section VI: West Virginia’s HAVA Budget	13
6.1 <i>The State’s proposed budget for activities under this part, based on the State’s best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—</i> <i>(A) the costs of the activities required to be carried out to meet the requirements of Title III;</i>	

(B)	<i>the portion of the requirements payment which will be used to carry out activities to meet such requirements; and</i>	
(C)	<i>the portion of the requirements payment which will be used to carry out other activities. -- HAVA §254 (a)(6)</i>	13
Section VII: Maintenance of Effort		15
7.1.	<i>How the State, in using the requirements payment, maintains the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000. -- HAVA §254 (a)(7)</i>	15
Section VIII: HAVA Performance Goals and Measures		16
8.1.	<i>How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met. -- HAVA §254 (a)(8)</i>	16
Section IX: State-Based Administrative Complaint Procedures		21
9.1	<i>A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under Section 402. -- HAVA §254 (a)(9)</i>	21
Section X: West Virginia’s HAVA State Plan Management		23
Section XI: Changes to State Plan from Previous Fiscal Year		24
Section XII: State Plan Advisory Committee		25
APPENDICES		27
Code of State Rules § 153-10		27-32
W. Va. Code § 3-1-48		33-35

SECTION I

Title III Requirements and Other Activities

1.1 *How the State will use the requirements payment to meet the requirements of Title III, and, if applicable under Section 251(b)(2), to carry out other activities to improve the administration of elections. -- HAVA §254 (a)(1)*

In March 2010, West Virginia certified that it has met all the requirements of Title III; therefore, the State will use the remaining Title 251 funds to carry out other activities to improve the administration of elections. The State may allocate HAVA funds for the following activities and may expand to other activities that are consistent with the provisions of HAVA:

- The cost of upgrading and maintaining the SVRS (Statewide Voter Registration System);
- State upgrades to election systems for cyber and physical security;
- Election night reporting and security;
- Secretary of State staff salaries and benefits related to HAVA designated expenditures;
- Payment or transfer of funds for cyber security experts or consultation;
- Payment for cyber monitoring
- On-site and off-site election security training of local election officials;
- Grants for electronic voting equipment
- Grants for electronic pollbooks;
- Grants for necessary physical security enhancements;
- Grants for ADA accessibility;
- Programs that help improve the accuracy and efficiency of the State's voter registration list.

SECTION II

West Virginia's Distribution of Requirements

2.1 How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of—

(A) The criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) The methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

The Secretary of State will manage activities and projects funded by HAVA requirements payments, and the state will account for all expenditures, funding levels, program controls and outcomes in accordance with state and federal laws.

The Secretary of State, with the State Election Commission, received approximately \$3 million for a perpetual fund to provide counties the opportunity to receive zero interest loans. The loans were to provide assistance in purchasing HAVA compliant voting machines. The impetus of the program was to fully convert every county to full compliance. In response, the State Legislature passed legislation, and the Secretary of State promulgated legislative rules facilitating the program.

After the initial disbursement of the loan funds, the State Election Commission received and approved several voting equipment loans. At the time of this writing, the fund balance stands at \$2,896,929.99. The fund has recently been less impactful due to voting equipment vendors offering longer repayment and less down payment financing options directly to counties. This has resulted in the state-level loan fund remaining relatively unused.

The proposed change in the updated 2018 HAVA state plan would result in forming a grant program through available funds in the existing loan program fund. This grant program is designed to maximize the funds to assist local units in purchasing election equipment, provide additional security, purchase e-pollbooks and comply with ADA requirements.

With the approval of the State Legislature, the Secretary of State has established statutory authority for this local government grant program to assist counties in implementing this program and complying with HAVA requirements. Only counties are eligible for local grant funding.

2.2 HAVA Grant Board

Consistent to rule CSR 153-10, the Secretary of State will establish a HAVA Grant Board, consisting of two County Clerks (neither of the two of the same party affiliation), the Director of the Elections Division in the office of the Secretary of State, and one member from the disability rights community and one representative of the Governor's office. All members, except for the Director of the Elections Division, will serve a four-year term. The Director of the Elections Division will serve as the Chair of the HAVA Grant Board, and the Secretary of State's office will assist the HAVA Grant Board with anything necessary to meet the requirements set forth in this plan. This Board is responsible for developing, reviewing, and making recommendations to the State Elections Commission in matters pertaining to the local government grant program and will comply with the State's open meeting laws.

The Secretary of State will administer the grant program and will be responsible for meeting federal auditing requirements.

Examples of activities which would be eligible for local government grant funding are listed below:

- Purchasing electronic pollbooks;
- Developing and requiring education and training programs and related services for state, county, and local election officials involved in the conduct of elections;
- Replacing or upgrading voting equipment;
- Purchasing additional voting equipment;
- Approving an appropriate level of financial support of local activities related to HAVA requirements;
- Upgrades to physical security for any critical infrastructure designated by DHS definition.

The HAVA Grant Board will prescribe a general application form that counties shall use to apply for a HAVA County Grant.

Before a county may apply for a HAVA county grant, all funds in their State-Held account and County-Held Match Money account must be spent. The HAVA Grant Board will review applications and award funds consistent with this plan. Should a county be denied a HAVA County Grant, the county may submit an appeal to the State Election Commission to review the

decision. The decision of the State Election Commission shall be final. The appeal application will be prescribed by the HAVA Grant Board. The county that is submitting the appeal must do so within 30 days of receiving their denial notice. Grant funds may only be used for an allowable HAVA expense. If a county spends HAVA funds in an expense that is determined not to be an allowable HAVA expense, the expense shall be repaid to the State using the county's general fund.

SECTION III

Voter Education, Election Official Education and Training, Poll Worker Recruitment and Training

3.1 How the State provides for programs for voter education, election official education and training, and poll worker training which assists the State in meeting the requirements of Title III. -- HAVA §254 (a) (3)

Education and training programs are critical to a successful program of election reform in West Virginia. The successful implementation of HAVA will require that all poll workers, election officials, voters, etc. are educated about any new processes and new technologies that HAVA requires. Due to the passage of HAVA and because the West Virginia Legislature has passed significant election legislation in 2001, 2002, 2003, 2008 and 2018, training and education at all levels must be substantially recreated.

Currently, training and education target three groups: election officials in the counties, poll workers and voters. The Secretary of State's Office and the counties provide a variety of educational information to the voters which include various pamphlets, sample ballots published in local newspapers, press releases, voting information posted at the polling place, and information

on the website. The Secretary of State's Office also strives to provide election information in alternate formats to be utilized by the disabled community.

The Secretary of State's Office is required by the West Virginia Code to provide training to county election officials about election laws and procedures. Currently, county election official training is provided in a variety of forms. First of all, the Secretary of State's Office provides a variety of manuals to be used by the county election officials including election cycle calendars, absentee voting, and canvassing. The Secretary of State also publishes and provides each county copies of the election statutes and rules. The Secretary of State's Office also provides a variety of training meetings for the county officials and corresponds regularly regarding new issues and changes in law or procedures.

Perhaps the most significant form of training to county election officials comes in the form of individual consultations by telephone or meetings with the elections division daily during the Secretary of State's regular business hours. In addition to the existing forms of training, the Secretary of State provides regional trainings to assist the counties in instituting an effective poll worker training program.

The county clerks are responsible for training poll workers for each election using materials produced and provided by the Secretary of State. The Secretary of State will be revising all current training materials to give more effective training based on voting systems, revisions to West Virginia law during the last three legislative sessions and new HAVA requirements.

SECTION IV

Voting System Guidelines and Processes

4.1 How the State adopted a voting system guidelines and processes to be consistent with the requirements of Section 301. -- HAVA §254 (a) (4)

The original HAVA task force guided the State on the voting system that would be selected. West Virginia laws and administrative rules have been passed to provide for all Section 301 requirements. The Secretary of State and County Auditors manage the processes needed to comply with Section 301.

Existing voting systems in West Virginia are required to meet the standards set out in Section 3-1 of the Help America Vote Act of 2002. The voting system standards include the following:

- Permits the voter to verify in a private and independent manner the votes selected by the voter on the ballot before the ballot is cast and counted;
- Provides the voter with the opportunity, in a private and independent manner, to change the ballot or correct any error before the ballot is cast and counted; and
- Notification of the voter of any over votes, the effect of the over vote and the opportunity to correct. Since West Virginia uses central count optical scan ballot; this will be achieved through voter education of the standards, including instructions to the voter at the polling place and on the ballot.

SECTION V

West Virginia HAVA Fund Management

5.1 How the State established a fund described in subSection (b) for purposes of administering the State's activities under this part, including information on fund management. -- HAVA §254 (a) (5)

With the passage of Senate Bill 648 in March 2003, the legislature established two new funds for election reform expenditures that are kept separate and distinct from all other programs within the agency. The federal fund is used to maintain federal fund receipts and expenditures. The state fund is used to budget and expend general funds representing the 5% match required under HAVA.

The Secretary of State works with the State Auditor to follow and enforce all mandated fiscal controls and policies.

SECTION VI

West Virginia's HAVA Budget

6.1 The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—

- (A) the costs of the activities required to be carried out to meet the requirements of Title III;**
- (B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and**
- (C) the portion of the requirements payment which will be used to carry out other activities. -- HAVA §254 (a)(6)**

Since the State has fulfilled HAVA's requirements and will continue to do so, the State wishes not to restrict itself unnecessarily through this state plan. New programs to improve the administration of federal elections may develop that have not yet been contemplated. The State will continue to submit annual financial status and narrative reports to the Election Assistance Commission (EAC) concerning HAVA grants as required.

In previous HAVA state plans the State described a budget for projected amounts to fund Title III required programs. All programs were fulfilled within that budget and significant funds remain available to the State. Since West Virginia is HAVA compliant, any future HAVA funding will be used, as intended by Congress, to upgrade election-related computer systems to address cyber vulnerabilities identified through the Department of Homeland Security or similar scans or assessments of existing election systems; facilitate cybersecurity training for the state chief election official's office and local election officials; implement established cybersecurity best practices for election systems; and fund other activities that will improve the security of elections for federal office.

The budget was based on the assumption that West Virginia would receive the minimum \$5,326,531 in Title I funds in requirements payment for federal fiscal year 2003. It was also based on the assumption that the State would receive a further \$19,973,469, or the full funding of HAVA. However, West Virginia received only \$15,303,569 during federal fiscal year 2004, for a total of \$20,630,100. In fiscal year 2008, the U.S. Congress appropriated an additional \$755,964 to West

Virginia. There is a further assumption that if the United States Congress fully funds HAVA, that the state will receive an approximate addition of \$3,000,000. The West Virginia Legislature has already appropriated \$800,000 in funds for the five percent match. In addition, the Secretary of State's Office appropriated an additional \$5,451 to meet the original matching requirements. In the future, the state will appropriate the necessary matching funds to meet the requirements of HAVA.

West Virginia received a Title II Section 251 payment in the amount of \$17,184,961.00. As of April 1, 2018, the State has a total of \$1,017,738.91 of Title II funds remaining available, and \$2,896,929.99 in the aforementioned county grant fund. These amounts are based on current totals and may fluctuate based on various expenditures and interest earned. The State will not truly know how much each of these will cost until final expenditures are made.

The State expects that costs to counties will continue and increase at least at the rate of inflation to prepare and implement federal elections within the framework of the current voting system. When new voting systems are required, counties will face significant additional costs in acquiring the new equipment. The State and counties will work to maintain the current voting system for as long as practicable.

SECTION VII

Maintenance of Effort

7.1 How the State, in using the requirements payment, maintains the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000. -- HAVA §254 (a)(7)

Consistent with HAVA §254(a)(7), in using any requirements payment, West Virginia will maintain expenditures of the State for activities funded by the payment at a level equal to or greater than the level of such expenditures in State FY 2017 of \$42,329, which ended June 30, 2017. These funds represent the portion of the expenditures made by the Secretary of State during fiscal year 2017 for activities carried out by the elections division that are consistent with the activities to be funded by the requirements payment.

As in many states, the majority of all election expenditures are incurred by individual county budgets. Statewide elections occur every even year in conjunction with the federal elections. In addition, the counties are responsible for special elections for county issues such as levies and bonds. West Virginia's fifty-five county budgets typically support year-round core staff and operating expenses for continuous functions such as voter registration, information services, and technical support. Furthermore, the counties provide the significant increase in funding associated with each specific election such as poll workers, temporary office staff, and ballot production.

It is therefore important to note that the projected HAVA budget set forth in Section Six of this Plan is based on the assumption that the counties will also maintain election expenditures at existing levels. The Secretary of State will meet all requirements found in HAVA in relation to reporting the maintenance of effort as it relates to state election responsibilities. Further guidance from the U.S. Elections Assistance Commission will be required to meet this portion of the State's plan.

SECTION VIII

HAVA Performance Goals and Measures

8.1 How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met. -- HAVA §254 (a)(8)

West Virginia believes that accurate measurable objectives and the tracking of performance goals help achieve what our mission statement lays out. Performance goals give a high-level overview of the desired mission. The State's main goal has always been to achieve election reform and compliance with HAVA requirements through the successful implementation of the programs outlined in the State Plan. In March 2007, the Secretary of State certified to the Election Assistance Commission that West Virginia had fulfilled all Title III requirements. This State Plan specifically details how and when each objective was met.

301 (a)(1)(B)(i) - Establish a voter education program on the effect of casting multiple votes for an office.

Performance Goal	Eliminate over votes
Performance Measurement	Counties have a capability to produce over vote reports from the tabulating systems
Timetable	Continuous
How to Measure Performance	Determine the proper instructions are posted in the polling place. Compare percentage of over votes to votes cast in each election
Who will measure	County auditors will report to the Secretary of State.

301 (a)(1)(B)(ii) - Establish instructions on how to correct ballot errors.

Performance Goal	Provide easily accessible instruction in each polling place.
Performance Measurement	Are the instructions posted?
Timetable	Continuous
How to Measure Performance	Determine the proper instructions are posted in the polling place. Precinct workers report to county clerk on compliance.
Who will Measure	County Clerks

301 (a)(3)(B) - Provide one accessible voting device per polling place.

Performance Goal	Provide an accessible voting device per polling place.
Performance Measurement	Is there a functioning machine in each polling place?
Timetable	Continuous
How to Measure Performance	Precinct workers report to county clerk on compliance.
Who will Measure	County Clerks

302 - Provisional voting.

Performance Goal	<ol style="list-style-type: none"> 1. Provide notice for availability of provisional ballot. 2. Provide provisional ballot materials at each polling place. 3. Train poll workers on provisional ballot requirements. 4. Offer provisional ballots to voters who qualify.
	<ol style="list-style-type: none"> 5. Allow all voters who claim to be registered to vote in the precinct, but who can't be confirmed to vote a provisional ballot.
Performance Measurement	Monitor the number of calls to county clerks or Secretary of State reporting a person was not able to vote a provisional ballot.
Timetable	Continuous
How to Measure Performance	Determine the clerks were trained by the Secretary of State, the poll workers trained by the clerks, and provisional ballots were printed and available at the polling place.
Who will Measure	County Clerks will report to the Secretary of State.

302 (b) - Posting of information at the polling place.

Performance Goal	Provide easily accessible instructions in each polling place including at least three 48-point or larger font poster-sized versions.
Performance Measurement	Are the instructions posted?
Timetable	Continuous
How to Measure Performance	Determine if Secretary of State provided the auditors three poster-sized directions in 48-point font or larger addressing voting and hours of polling place. Determine the clerks displayed a sample ballot, directions on how to mark a ballot, and how to correct a ballot in each booth. Precinct workers report to county clerks on compliance.
Who will Measure	County Clerks

303 (a)(2)(A)(ii)(I) - Felony record check.

Performance Goal	Every person convicted of a felony is removed from the voter registration list and is not able to reregister until their sentence is completed. Established a computer system to conduct checks and notify clerks about felony convictions.
Performance Measurement	1. Ensure each new or updated voter registration is checked against the felony conviction file. 2. Ensure all new felony convictions are checked against the statewide voter file. 3. Remove all those who are ineligible from voter file. 4. Secretary of State will double check felony convictions identified by this system to prevent erroneous removal of eligible voters.
Timetable	Continuous
How To Measure Performance.	Verify accuracy of the telephone complaint against actual voter and felon records.
Who will Measure	County Clerks and Secretary of State.

303 (a)(2)(A)(ii)(II) - Death records check.

Performance Goal	Every deceased person is removed from the voter registration list and that no deceased person's name is added to the voter registration list. Establish a computer system to conduct checks and notify auditors about deaths.
------------------	---

Performance Measurement	1. Ensure each new or updated voter registration is checked against vital statistics file. 2. Ensure all new deaths are checked against the statewide voter file. 3. Remove all those who are deceased from voter file. 4. Secretary of State will double check death notices identified by this system to prevent erroneous removal of eligible voters.
Timetable	Continuous
How to Measure Performance	Verify accuracy of the report against actual voter and death records
Who will Measure	County Clerks and Secretary of State

303 (a)(5)(A)(iii) - Verify driver license or verify last four digits of SSN.

Performance Goal	Ensure no person is allowed to register to vote without providing an accurate driver license number or last four digits of their social security number.
Performance Measurement	Establish computerized access system for information verification to validate all new registrations.
Timetable	Continuous
How to Measure Performance	Verify accuracy of the system by comparing actual voter and driver license records.
Who will Measure	County Clerks and Secretary of State

303 (b)(4) - New voter registration forms.

Performance Goal	Provide voter registration forms which comply with HAVA
Performance Measurement	Check to make sure all official voter registration site have new forms.
Timetable	Complete
How to Measure Performance	Telephone and mail verification with sites.
Who will Measure	County Clerks and Secretary of State

251(b)(2) - Other activities to improve administration of elections.

Performance Goal	Provide daily electronic transmission of new voter registration date from all driver license office to the appropriate county auditor office. Eliminate missed voter registration deadlines because of registration card transit time.
------------------	--

Performance Measurement	Affirm all voter registrations completed at a driver license office by a registration deadline are added to the official registration list for that election.
Timetable	Continuous
How to Measure Performance	Affirm all voter registrations completed at a driver license office by a registration deadline are added to the official registration list for that election.
Who will Measure	County Clerks and Secretary of State

The Secretary of State will establish performance goals and procedures to measure the progress toward the achievement of each of the goals set out in this plan to assure full compliance with HAVA. The plan itself will be the criteria used to determine performance and success. The counties will have a substantial responsibility in carrying out the various goals of the plan. Therefore, the counties will be reporting to the Secretary of State on a variety of indicators regarding the progress and success of each component.

State responsibilities, such as implementing a centralized, state-wide voter registration system, will be monitored at each step of implementation by the Secretary of State through RFP, bidding process, and contract negotiation. This process will provide county officials with structure and continued measurable targets for accomplishment.

Plan Element	Official Responsible	Timetable
Voting Systems	Secretary of State/County Officials	January 1, 2006
Provisional Voting	County Clerks	January 1, 2004
Voter Registration	Secretary of State	January 1, 2004
Education and Training	Secretary of State/County Officials	January 1, 2004
Complaint Procedure	Secretary of State	January 1, 2004
Elimination of Punch Card and Lever Machine	Secretary of State/County Officials	January 1, 2004 (with waiver until January 1, 2006, if necessary)
Management of State Plan and HAVA funds	Secretary of State	Continuous

SECTION IX

State-Based Administrative Complaint Procedures

9.1 A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under Section 402. -- HAVA §254 (a)(9)

Prior to the passage of HAVA, the Secretary of State handled election complaints in accordance with the standard operating procedures established in 2001. Most complaints were handled informally to most effectively resolve immediate problems. When an individual was dissatisfied with any attempt to resolve the problem through informal means, the individual could file a formal complaint. This procedure required written complaints that were reviewed and investigated. Upon gathering all significant information, the Secretary of State determined the appropriate action given the limitations of authority that the Secretary of State has over county officials.

Most complaints are resolved through education of election officials and amending election procedures at the county level. However, under certain circumstances, the Secretary of State turns complaints over to law enforcement agencies such as the West Virginia State Police, county prosecutors or the United States Department of Justice.

In March 2003, the West Virginia Legislature passed Senate Bill 648, which adopted the complaint procedure required by HAVA. The procedure is somewhat more formal than the previous procedure, but uses the same type of process by making the Secretary of State the central office for receiving complaints, allows the Secretary of State to gather needed information, and then requires the Secretary of State to take the appropriate action. Generally, the only action that can be taken by the Secretary of State given his constitutional and statutory authority is to notify the appropriate agency of wrongdoing and to suggest resolutions.

After the implementation of the new process, most election complaints will still likely be resolved through the informal process of contacting parties by phone or in writing to get immediate resolutions. However, when complaints do become part of the formal process, the Secretary of

State will require that the complaint be made in writing and notarized. The complainant will be given a hearing, if requested, and a decision will be made within ninety days of receiving the complaint, unless the complainant agrees to an extension. If not resolved within ninety days, the complaint will be handled through alternate dispute resolution.

If the Secretary of State determines that no violation has occurred, a written decision will be issued. If the determination is made that a violation has occurred, the Secretary of State will contact the county officials and/or law enforcement with request that the violation be remedied or prosecuted.

101. This funding will be used to purchase the statewide voter registration system, since it is one of the first expenses that will be incurred in accordance with the act.

§102. Replacement of punch card or lever voting machines.

West Virginia was eligible for approximately \$2.381 million under Section 102. In accordance with HAVA, these funds were used to purchase one electronic voting apparatus per precinct. This apparatus is equipped with the disability components to comply with the voting system requirements in Section 301. The funds were also a portion of the purchase required to completely replace the punch card and lever machine equipment in the fifteen counties currently using those systems.

SECTION X

West Virginia's HAVA State Plan Management

11.1 How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change—

- (A) is developed and published in the Federal Register in accordance with Section 255 in the same manner as the State plan;**
- (B) is subject to public notice and comment in accordance with Section 256 in the same manner as the State plan; and**
- (C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A). -- HAVA §254 (a)(11)**

West Virginia used the State Plan as the foundation for implementation of HAVA. Due to the small staff of the Secretary of State's Office, organization and planning for implementation was crucial to its success. The State expects the HAVA program to be ongoing for several years. These funds will allow for updating of voting technology.

The State understands and agrees to comply with HAVA requirements related to ongoing management of the State Plan. More specifically, the State agrees that it may not make any material change in the administration of the State Plan unless the change:

- (A) is developed and published in the Federal Register in accordance with HAVA §255 in the same manner as the State Plan;
- (B) is subject to public notice and comment in accordance with HAVA §256 in the same manner as the State Plan; and
- (C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

SECTION XI

Changes to State Plan from Previous Fiscal Year

12.1 In the case of a State with a State plan in effect under this subTitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year. -- HAVA §254 (a) (12).

The 2017 fiscal year encompassed a number of HAVA successes as related to the state plan. West Virginia has accomplished each of the requirements of HAVA and has only now decided to update the plan to include efforts to update voting technology, as well as, other election improvements and funding.

During the period from July 1, 2016 to June 30, 2017, the state provided for another successful election with HAVA compliant voting equipment. Other items previously met within the state plan include the administrative complaints filing procedure, HAVA compliant provisional voting procedures, the updates to the statewide voter registration system, and the further improvement of federal elections through the education of poll workers, voters, and election officials.

Although, each basic requirement of HAVA was met before the beginning of last fiscal year, the Secretary of State's office has continued to educate voters, train election officials, and establish procedures to effectively improve the administration of federal, state and municipal elections.

SECTION XII

State Plan Advisory Committee

13.1 A description of the committee which participated in the development of the State plan in accordance with Section 255 and the procedures followed by the committee under such Section 255 and Section 256. -- HAVA §254 (a) (13)

The State's HAVA Advisory Committee consists of individuals representing a cross-section of election stakeholders. The State Plan Committee was selected by the State's chief election official, Mac Warner, Secretary of State.

Members of the HAVA Advisory Committee, and the organizations that they represent, are as follows:

- Member from Secretary of State's Office to act as chairman:
- Representative from the Governor's Office
- Representative from Division of Motor Vehicles
- Two county clerks (from the two most populous counties)
- Voting rights advocates:
 - County Clerks Association
 - Municipal League
- Members of the disability rights community:
 - American Federation for the Blind
 - WV ADA Coordinator
 - Disability Rights WV
- Other advocacy groups:
 - Citizens Action Group
 - League of Women Voters
 - WV Senior Services
 - WV Department of Veterans Assistance
 - AARP
- One member from each political party:
 - Democrat
 - Republican

- Mountain
- Libertarian
- Individual participants:
 - Mark Rhodes, County Clerk of Wood
 - Brian Wood, County Clerk of Putnam

The State Plan Committee will comply with the requirements of §255 and §256 of HAVA.

TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE

SERIES 10
LOAN AND GRANT PROGRAMS UNDER THE HELP AMERICA VOTE ACT (HAVA) FOR
THE PURCHASE OF VOTING EQUIPMENT, ELECTION SYSTEMS, SOFTWARE,
SERVICES AND UPGRADES

§153-10-1. General.

1.1. Scope. -- This Rule establishes procedures for administration and eligibility of West Virginia counties to apply for and receive funding to improve the administration of elections for Federal office, including to enhance election technology and make election security improvements, payable from the County Assistance Voting Equipment Fund created by the Help America Vote Act (HAVA), 52 U.S.C. § 20101, et seq.

1.2. Authority. -- W.Va. Code §3-1-48(1).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This Rule shall terminate and have no further force or effect 5 years from the effective date of this Rule.

1.6. Repeal and Replace. -- This legislative rule repeals and replaces 153CSR10, "Loan Program for Purchase of Voting Equipment, Software and Services" effective May 9, 2006.

§153-10-2. Definitions.

2.1. For the purposes of this rule:

2.1.1. "Approved" means authorization granted by the State Election Commission or EAC.

2.1.2. "Clerk" means the Clerk of the County Commission or other official charged with the administration of elections.

2.1.3. "Election Assistance Commission" or "EAC" means the federal agency created by HAVA to provide programs for voting assistance to state and local governments.

2.1.4. "Election system" means any mechanical device, hardware, software or combination thereof designed to work or operate in conjunction with, secure, maintain or improve any part of the voting process or systems, including but not limited to accessible electronic voting systems and e-pollbooks.

2.1.5. "Electronic pollbook" or "E-pollbook" means an approved electronic device containing voter registration information for the purpose of facilitating voting at the precinct.

2.1.6. “Electronic voting system” means one or more approved accessible integrated devices that utilize an electronic component for the following functions: ballot presentation, vote capture, vote recording or tabulation.

2.1.7. “Fund” means the County Assistance Voting Equipment Fund bearing the designation “1615” by the State.

2.1.8. “Grant” means a sum of money authorized for disbursement by the State Election Commission to a county from the Fund to improve the administration of elections for Federal office, including to enhance election technology and make election security improvements, including but not limited to electronic voting system upgrades, cybersecurity enhancements, physical security upgrades and e-pollbooks.

2.1.9. “HAVA” means the Help America Vote Act (2002), 52 U.S.C. § 20101, *et seq.*

2.1.10. “HAVA Grant Board” means a body authorized by W. Va. Code § 3-1-48(1) for the purpose of making recommendations to the State Election Commission to issue grants to West Virginia counties from the Fund consistent with this Rule. The HAVA Grant Board shall be comprised of members appointed by the Secretary from the following agencies and organizations:

2.1.10.a. The Director of the Elections Division of the Secretary of State’s Office who shall act as Chairperson of the Board;

2.1.10.b. A representative from a disability rights organization;

2.1.10.c. Two (2) Clerks of opposite political parties from the West Virginia Association of County Clerks; and

2.1.10.d. A representative from the Governor’s office.

2.1.11. “Loan” means a borrowed sum of money by a county from the County Assistance Voting Equipment Fund that is expected to be paid back to the State.

2.1.12. “Nonpayment of the loan installments” means a nonpayment of two consecutive monthly payments or nonpayment of an annual payment in excess of thirty (30) days beyond the scheduled payment date.

2.1.13. “Physical Security” means equipment and techniques employed to protect hardware, software, networks and data from physical actions, tampering and events that could cause loss or damage to election systems due to burglary, theft, vandalism, terrorism, fire, flood and natural disaster.

2.1.14. “Program” means the county loan and grant programs created to facilitate the improvement of the administration of elections for Federal office, including to enhance election technology and make election security improvements, including but not limited to electronic voting system upgrades, cybersecurity enhancements, physical security upgrades and e-pollbooks.

2.1.15. “Secretary” means the West Virginia Secretary of State.

§153-10-3. Eligibility for Grant Funding for Election Systems and Election System Upgrades.

3.1. Any county commission requesting a grant from the Fund shall file an application verified by their Clerk with the Secretary.

3.2. The application shall be on a form provided by the Secretary and shall contain the following information:

3.2.1. Name of county;

3.2.2. Amount of grant requested;

3.2.3. Proposed use of funds, including type of equipment, software and/or services and quantity, if applicable;

3.2.4. Statement that the county has matching funds available equal to at least fifteen percent (15%) of the cost of physical security upgrades or e-pollbooks; and/or fifty percent (50%) of the cost of electronic voting systems, software and/or service;

3.2.5. Statement that the county has the authority to purchase election systems, or election systems upgrades, through lawful purchasing procedures no later than one hundred twenty (120) days from receipt of the award;

3.2.6. Statement of the county indebtedness, arrearage or obligation to the State of West Virginia or its agencies;

3.2.7. A copy of the resolution passed by the county commission authorizing the county to purchase election systems or election systems upgrades pursuant to this program;

3.2.8. Such other information deemed necessary by the Secretary;

3.2.9. Signatures of a majority of the county's commissioners and Clerk;

3.2.10. Date of application.

3.3. To be eligible for a grant from the Fund, a county applicant must be eligible for the award at the time of application and at the time the award is received by meeting all criteria in place at the time of the application and award; and

3.3.1. Must be current in a repayment plan for outstanding indebtedness, arrearage or obligation to the State of West Virginia or its agencies;

3.3.2. Must possess the ability to meet any matching funds obligation; and

3.3.3. Must possess lawful authority to purchase election systems, or election systems upgrades, through lawful purchasing procedures no later than one hundred twenty (120) days from receipt of the award.

3.4. A county commission must possess at least fifteen percent (15%) of the cost of equipment, software and/or services for e-pollbooks and may only obtain a grant from the Fund for up to eighty-five percent (85%) of the cost, to be determined on availability of funds by the HAVA Grant Board.

3.5. A county commission must possess at least fifty percent (50%) of the cost of the equipment, software and/or services for electronic voting systems and may only obtain a grant from the Fund for up to fifty percent (50%) of the cost, to be determined on availability of funds by the HAVA Grant Board.

3.6. A county commission must possess at least fifteen percent (15%) of the cost of equipment, software and/or services for physical security measures to protect election systems and may only obtain a

grant from the Fund for up to eighty-five percent (85%) of the cost, to be determined on availability of funds by the HAVA Grant Board.

3.7. Grants may be approved by the State Election Commission, upon a recommendation by the HAVA Grant Board, only for the purpose of improving the administration of elections for Federal office by enhancing election technology and security, including but not limited to the purchase of election systems, election system upgrades, electronic voting systems, or physical security, and only if certified when necessary, or otherwise approved by the State Election Commission, under a purchase by the county pursuant to a lawful local procurement procedure.

§153-10-4. Eligibility for Loan Funding for Voting Systems, Software and Services.

4.1. Any county commission requesting a loan from the Fund shall file an application with the Secretary.

4.2. The application shall be on a form provided by the Secretary of State and shall contain the following information:

4.2.1. Name of county;

4.2.2. Amount of loan requested;

4.2.3. Proposed use of funds, including type of equipment, software and/or services and quantity, if applicable;

4.2.4. Statement that county has obtained at least fifty percent (50%) of the cost of the equipment, software and/or service;

4.2.5. Date of application;

4.2.6. Signature of a majority of the county's commissioners and Clerk;

4.2.7. Such other information deemed necessary by the Secretary of State.

4.3. In addition to the application, the county commission shall provide to the Secretary of State a copy of the resolution passed by the county commission authorizing the county to purchase or lease the voting equipment, software and/or services and to enter into the loan agreement.

4.4. A county commission must obtain at least fifty percent (50%) of the cost of the equipment, software and/or services and may only obtain a loan from the Fund for up to fifty percent (50%) of the cost.

4.5. The State Election Commission may waive a portion or all of the fifty percent (50%) matching funds if the county commission demonstrates to the satisfaction of the State Election Commission that the county commission has exercised due diligence to raise the matching funds; it is unable to obtain the matching funds; and that it has the ability to pay the installments on the loan when due.

4.6. A county commission may request a waiver of the matching funds by filing an application with the State Election Commission.

4.7. Loans may be approved by the State Election Commission only for the purpose of improving the administration of elections for Federal office by enhancing election technology and security, including but not limited to the purchase of election systems, election system upgrades, electronic voting systems,

or physical security, and only if certified when necessary, or otherwise approved by the State Election Commission, under a purchase by the county pursuant to a lawful local procurement procedure.

§153-10-5. Application Review and Approval Process.

5.1. For the purpose of a county obtaining a Grant from this program:

5.1.1. The Secretary shall notify each Clerk of the availability to apply for an election system Grant from the Fund. The period to apply for a Grant shall remain open for thirty (30) days from the date of the notice given to the Clerk.

5.1.2. No later than ten (10) days after the close of the period to apply for a Grant, the HAVA Grant Board shall hold a public meeting at a location designated by the Secretary for the purpose of reviewing the properly submitted applications. The HAVA Grant Board shall vote on whether to approve or deny each application. In reaching its decision, the HAVA Grant Board should consider the following:

5.1.2.a. The amount requested by the applicant;

5.1.2.b. The total amount of all requests made by all applicants;

5.1.2.c. A pro rata fraction of funds available at the time of the request. The numerator of the fraction shall be the number of registered voters in that county, and the denominator shall be the total number of registered voters in the State as of the most recently passed federal presidential election.

5.1.3. No later than ten (10) days after the HAVA Grant Board meeting, the State Election Commission shall meet to consider the recommendations of the HAVA Grant Board. The State Election Commission shall review and decide upon the recommendations of the HAVA Grant Board. Unless the decision of the HAVA Grant Board is arbitrary and capricious, the recommendations should be adopted by the State Election Commission. *Provided*, that any Clerk whose application is denied by the HAVA Grant Board may appear and present good cause to the State Election Commission as to why their application should be granted.

5.1.4. The decision of the State Election Commission shall be full and final.

5.1.5. Upon approval, the county and State Election Commission shall execute any and all necessary documents required by each and perform accordingly.

5.2. For the purpose of a county obtaining a Loan from this program:

5.2.1. Upon receipt of a completed application for a loan, the State Election Commission shall review and approve the application, deny the application or request additional information within forty-five (45) days. Any denial shall include a letter setting forth the reason(s) for the denial. Any county commission receiving a denial has thirty (30) days to amend its original application in order to comply with any necessary changes required by the State Election Commission.

5.2.2. Once a county commission has met all of the requirements of this rule, the State Election Commission shall approve the loan if funds are available.

5.2.3. Upon approval, the county commission and the State Election Commission shall enter into a contract for the repayment of the loan by equal monthly or annual payments for the length of the contract, not to exceed five (5) years to obtain the equipment, software and/or services.

5.2.4. Upon written request by the county commission, the State Election Commission may extend the repayment of the loan on a year-to-year basis for a period not to exceed five (5) additional years. Nothing in this Section should be construed to allow a loan to continue for more than ten (10) years from the date of the signing of the agreement.

5.4.5. Unanimous approval shall be required by the State Election Commission when a county commission applies for a subsequent loan from the Fund while such county commission currently has an outstanding loan from the fund.

§153-10-6. Repayment of Loans.

6.1. The county commission shall promptly enter into a contract with the State Election Commission for a no-interest repayment of the loan over a period not to exceed five (5) years or the length of the contract to obtain the equipment, software, or services, whichever is less, notwithstanding any subsequent agreement granting an extension pursuant to subSection 5.2.4 of this Rule.

6.2. No county commission may apply for and receive a loan if that county commission currently has an outstanding loan from this fund which is in default.

6.3. Upon nonpayment of the loan installments by the county commission or other breach of the loan agreement, the Secretary may institute a civil action, mandamus or other judicial or administrative proceeding to compel performance by the county commission.

6.4. The Secretary of State will cease any legal action upon full payment of the default amount by the county. The defaulting county commission is liable for any legal costs incurred by the Secretary in order to obtain compliance.

§153-10-7. Ownership.

7.1. All equipment, software and services acquired through the Grant program described in Section 3 of this Rule shall be purchased by the county and shall be the county's exclusive property. The equipment shall be solely owned by the county.

7.2. All equipment, software and services acquired through the Loan program described in Section 4 of this Rule shall be purchased by the Secretary from the vendor under a contract and shall be immediately turned over to the county. The equipment shall be solely owned by the county.

§3-1-48. Legislative findings; State Election Fund; loans to counties; availability of funds; repayment of loans; grants to counties for election systems.

(a) *Legislative findings.* - The Help America Vote Act of 2002, PL 107-252, 42 U.S.C. §15301, *et seq.*, provides funding so that all states will be able to implement some form of electronic voting system to replace punch card and lever machines by 2006. The new voting systems must meet several requirements including notifying the voter of over votes and permitting each voter to review his or her ballot and correct errors before casting the vote. The limited, finite funding available to the state will not be sufficient to meet current and future needs for equipment and services as equipment needs to be obtained, repaired, or replaced as technology changes. It is the intent of the Legislature to maximize the available funds by establishing a no-interest loan program to assist any county, regardless of its current voting system, in purchasing necessary electronic voting equipment and services. As the loans are repaid funds will continue to be available to meet future needs. It is not the intent of the Legislature to mandate any technology for voting systems to be utilized in this state and this Section is intended only to establish terms and conditions for providing loan assistance to counties in accordance with the provisions of this Section.

(b) *State Election Fund.* - The special revenue account created in the State Treasury and known as the State Election Fund account is continued. Expenditures from the account shall be used by the Secretary of State for the administration of this chapter in accordance with the provisions of 42 U.S.C. §15301, *et seq.*, the Help America Vote Act of 2002, PL 107-252, in accordance with the provisions of §4-11-1 *et seq.* of this code.

(c) *Establishment of special revenue account.* - There is created in the State Treasury a special revenue revolving fund account known as the County Assistance Voting Equipment Fund which shall be an interest-bearing account. The fund shall consist of an initial transfer not to exceed \$8,500,000 from the State Election Fund established under §3-1-48(b) of this code pursuant to legislative appropriation; any future funds received from the federal government under the Help America Vote Act of 2002, PL 107-252, 42 U.S.C. §15301, *et seq.*, or subsequent acts providing funds to states to obtain, modify, or improve voting equipment and obtain necessary related services including voting systems, technology, and methods for casting and counting votes; any funds appropriated by the Legislature or transferred by any public agency as contemplated or permitted by applicable federal or state law; and any accrued interest or other return on the moneys in the fund. The balance remaining in the fund at the end of each fiscal year shall remain in the fund and not revert to the State General Revenue Fund.

(d) *Use of funds.* - The money in the fund shall be used only in the manner and for the purposes prescribed in this Section. Notwithstanding any provision of law to the contrary, funds in the County Assistance Voting Equipment Fund may not be designated or transferred for any purpose other than those set forth in this Section.

(e) *Administration of the fund.* - The Secretary of State shall administer the fund with the approval of the State Election Commission.

(f) *Investment of fund.* - The moneys of the fund shall be invested pursuant to [§12-6-1](#) *et seq.* of this code and in such a manner that sufficient moneys are available as needed for loans authorized under this Section.

(g) *Loans to counties.* - The county assistance voting equipment fund shall be used to make no-interest loans to counties to obtain, modify, or replace voting equipment, software, and necessary related services including voting systems, technology, and methods for casting and counting votes: *Provided*, That any county commission that purchased an electronic voting system prior to November 13, 2004, is eligible to apply for matching funds under this Section to upgrade the system: *Provided, however*, That matching funds available for an upgrade shall not exceed the amount available under [§3-1-48\(g\)\(1\)](#) of this code for the purchase of a new electronic voting system under the Secretary of State's authorized contract. The loans shall be made under the following terms and conditions:

(1) The State Election Commission shall, subject to availability of funds, loan no more than 50 percent of the cost of the voting equipment or services to any county commission: *Provided*, That a portion or all of the county matching requirement may be waived in limited circumstances as determined by the State Election Commission pursuant to this Section.

(2) The county commission shall provide sufficient documentation to establish to the satisfaction of the State Election Commission that the county commission has at least 50 percent of the money necessary to obtain the voting equipment, software, or services for which the loan is sought.

(3) The county commission shall enter into a contract with the State Election Commission for the repayment of the loan over a period not to exceed five years or the length of the contract to obtain the equipment, software, or services, whichever is less.

(4) The county commission shall use the loan for voting equipment and services certified by the State Election Commission pursuant to the provisions of [§3-4a-1](#) *et seq.* of this code and authorized for use by the Secretary of State.

(5) A county commission may apply for a loan on a form provided by the Secretary of State. The form shall, in addition to requesting information necessary for processing the

application, state the deadline for submitting the application and the eligibility requirements for obtaining a loan.

(6) The State Election Commission may waive a portion or all of the matching money required by this subSection for a county commission that can establish that it has exercised due diligence in raising its share of the costs but has been unable to do so. On forms provided by the Secretary of State the county commission shall request a waiver and shall make a full financial disclosure of its assets and liabilities as well as potential for future income when applying for a waiver. The county commission shall demonstrate, to the satisfaction of the State Election Commission, its inability to meet the matching requirements of this subSection and its ability to repay the loan in a timely manner. Notwithstanding the provisions of [§3-1-48\(g\)\(3\)](#) of this code, the State Election Commission may extend the repayment period on a year-to-year basis for a repayment period not to exceed five additional years.

(h) *Application.* - An application for a loan shall be approved by the State Election Commission if the requirements of this Section have been met.

(i) *Rulemaking.* - The Secretary of State shall propose for promulgation in accordance with [§29A-3-1](#) *et seq.* of this code emergency and legislative rules necessary to effectuate the purposes of this Section.

(j) *Availability of loans.* - The State Election Commission may not approve a loan under this Section until final standards for electronic voting equipment with a voter verified paper ballot have been established by the Secretary of State or the national institute for standards and technology. The State Election Commission may not approve a loan for the purchase, lease, rental, or other similar transaction to obtain electronic voting equipment, software, or necessary related services unless obtained under a contract authorized by the Secretary of State pursuant to rules promulgated under this Section.

(k) *Repayment of loans.* - The Secretary of State may, by civil action, mandamus, or other judicial or administrative proceeding, compel performance by a county commission of all the terms and conditions of the loan agreement between the state and that county commission including periodic reduction of any moneys due the county from the state.

(l) Notwithstanding the provisions of this Section relating to loan procedures, the State Election Commission may, with a recommendation from the HAVA Grant Board, and consistent with the legislative rules of the program, approve a grant to a county for the purchase of election systems, or election system upgrades, payable from the County Assistance Voting Equipment Fund: *Provided*, That the Secretary of State shall issue emergency rules setting forth the criteria for the issuance of grants to the counties.