

TASC

TRAINING AND ADVOCACY SUPPORT CENTER

For Protection and Advocacy Systems and Client Assistance Programs of
the

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KEY PROVISIONS OF THE HELP AMERICA VOTE ACT OF 2002 FOR PROTECTION AND ADVOCACY SYSTEMS

A Federal Interagency Project of the Administration on
Developmental Disabilities,
the Center for Mental Health Services, the Rehabilitation
Services Administration, and the National Institute on
Disability and Rehabilitation Research

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TASC Training and Advocacy Support Center

National Association of Protection and Advocacy System

Help America Vote Act of 2002

On October 29, 2002, the President signed into law the Help American Vote Act of 2002 (HAVA), 42 U.S.C. 15301-15545, to improve the administration of elections in the United States. The new Act will provide financial assistance to states and will create new minimum standards for states to follow in several key areas of election administration. Among other things, these new standards deal with voting systems, voting accessibility, statewide computerized voter registration lists, provisional voting, information provided to voters, and voter registration by mail.

HAVA seeks to improve voting access to individuals with disabilities as follows:

- 1) establishes a Voting P&A and authorizes \$10,000,000 in funding for it;
- 2) makes accessibility grants available to states and local units of government to improve physical and non-visual access to polling places,
- 3) creates minimum standards for accessibility of voting systems that states must follow;
- 4) Requires states to include individuals with disabilities in the committee that the state is required to convene in order to create its State Plan for compliance with the Act's requirements; and
- 5) Provides funds for research on accessible voting technology.

Other important non-disability provisions of HAVA include:

- 1) establishes the Elections Assistance Commission, a new federal agency to serve as a clearinghouse for election administration information;
- 2) provides funding to states to improve election administration and to replace punch card and lever style voting systems;
- 3) create minimum standards for states to follow in several key areas of election administration; and
- 4) establishes a state administrative procedure for voting complaints.

Summary of Help America Vote Act¹

I. TITLE I – EARLY PAYMENTS TO STATES FOR ELECTION ADMINISTRATION IMPROVEMENTS AND REPLACEMENT OF ANTIQUATED VOTING MACHINES

- ! Authorizes \$325 million for buyout of punch card and lever voting machines.
- ! Authorizes \$325 million in payments to states to improve election administration.
- ! Each state is guaranteed to receive at least \$5 million under Title I.

II. TITLE II – ELECTION ASSISTANCE COMMISSION

- ! Establishes the Election Assistance Commission, a new federal agency consisting of two (2) Republican and two (2) Democratic appointees.
- ! The Commission serves as a clearinghouse for election administration information, carries out grant programs, provides for the certification and testing of voting systems, and studies election issues.
- ! The Commission has no rule-making authority but will issue voluntary guidance for the requirements of Title III.
- ! Authorizes appropriations for the following:

Requirements Payments

- Provides \$3 billion for meeting the requirements of Title III, providing poll worker training, voter education and improving the administration of federal elections.
- Requirements Payments allocated to states will be determined by a formula that will take into account the voting age population of the state.

Accessibility Grants

- \$100 million is available for state and units of local government to remove barriers and increase access to voters with disabilities.

Research Grants

- Provides \$20 million for research and development to improve voting technology.

Pilot Program Grants

- \$10 million is authorized for pilot programs to test new voting systems, including researching the accessibility of voting equipment.

Protection and Advocacy Systems (P&A)

- \$40 million over the next four years for a Voting P&A for individuals with disabilities.

¹ This summary is based upon the Ney-Dodd-Hoyer-McConnell HAVA Summary and has been slightly revised to further highlight the Act's disability provisions.

- Sets aside 10% of the funds appropriated under this section to be used by eligible entities to provide training and technical assistance.

National Student and Parent Mock Elections

- \$200 million to the National Student and Parent Mock Election for voter education.

III. TITLE III – REQUIREMENTS

Each state must:

- ! Provide voters an opportunity to check and correct errors in their ballots in a private and independent manner.
- ! Have a voting system with a manual audit capacity.
- ! Provide at least one voting machine that is accessible to all individuals with disabilities at each polling place by January 1, 2006.
- ! Provide alternative language accessibility pursuant to the Voting Rights Act.

IV. TITLE IV – ENFORCEMENT

- ! Department of Justice (DOJ) may seek injunctive or declaratory relief for violations of the Act.
- ! Each state that receives funds under the Act must establish an administrative grievance procedure for voting complaints. States that do not accept funds under the Act must either establish a grievance procedure or submit a compliance plan with DOJ.

V. TITLE V – HELP AMERICA VOTE COLLEGE PROGRAM

Authorizes \$5 million to establish a program to encourage college students to serve as non-partisan poll workers and to encourage state and local governments to utilize the resources that students provide.

VI. TITLE VI – HELP AMERICA VOTE FOUNDATION

Establishes a federally chartered corporation of a charitable and non-profit nature, whose purpose is to mobilize and place secondary school students to participate in the election process in a non-partisan manner as poll workers or assistants.

VII. TITLE VII – OVERSEAS AND MILITARY VOTING

Contains provisions to improve ballot access for military and overseas voters.

VIII. TITLE VIII – TRANSITION PROVISIONS

- ! Transfer functions of Federal Election Commission to the new Election Administration Commission

IX. TITLE IX – MISCELLANEOUS

- ! Authorizes Commission to conduct special audits of entities receiving funds under the Act.
- ! Provides criminal penalties for election fraud.

is governed by a board with a majority of its members that are individuals with disabilities or the family members of individuals with disabilities; and

– timely submits an application with any additional information required by the Secretary.

- ! Any P&A HAVA funds appropriated will remain available until expended.

TITLE III's STANDARDS TO ENSURE ACCESSIBILITY
FOR INDIVIDUALS WITH DISABILITIES

- ! Title III of HAVA sets out minimum Voting System Standards, which include accessibility requirements, that states must comply with by January 1, 2006.
- ! The term “Voting Systems” is defined very broadly under Title III of HAVA. For the purposes of this section on the accessibility standards, Voting Systems refers to voting mechanisms and the physical act of casting votes by voters, both in-person and absentee.
- ! Voting Systems must be accessible to individuals with disabilities in a way that provides the same opportunity for access and participation, including privacy and independence, as for other voters.
- ! *Each* polling place must have at least one direct recording electronic (DRE) voting system or other Voting System equipped for voters with disabilities, which allows the voter to:
 - o verify their vote in a private and independent manner before the ballot is cast and counted;
 - o change or correct the ballot privately and independently before the ballot is cast and counted; and
 - o notify the voter if they have selected more than one candidate for a single office and allow the voter the opportunity to correct the ballot.
- ! States can receive funds (referred to as “Requirement Payments”) to comply with HAVA’s accessibility requirements and all the other requirements that are set forth in Title III.

- ! All Voting Systems purchased after January 1, 2007 with funds made available through Title II of HAVA (i.e., Requirements Payments) must meet the Voting Systems standards for disability access.

REQUIREMENT PAYMENTS AND STATE PLANS

- ! Requirements Payments are funds that are available to states to meet the requirements of Title III (Voting System Standards).
- ! The amount of Requirements Payments allocated to states will be determined by a formula that will take into account the voting age population of the state.
- ! To be eligible to receive a Requirement Payment a state must submit to the Commission a **State Plan** for each fiscal year it seeks to receive a payment. The state must also submit a certification that it has met certain state planning requirements set out in HAVA, pass enabling legislation and appropriate a small amount of state funds for voting.
- ! The state is required to develop the State Plan through a committee of “appropriate individuals,” which includes “the chief election officials of the two most populous jurisdictions within the state, other local election officials, *stake holders (including representatives of groups of individuals with disabilities)*, and other citizens,” appointed by the chief election official. *42 U.S.C. § 15405*
- ! The state may only submit its final draft of the State Plan and its certification to the Commission if certain prerequisites are met. Specifically, the state must:
 - " Make a preliminary version of the Plan available for public inspection for 30 days and the state must take in account any comments received when revising its plan; and
 - " Submit the plan to the Commission to be published in the Federal Register for 45 days after the initial period for public inspection and review of comments has ended.
- ! The Act does not specify a date when the Plan must be submitted to the Commission; however, it is wise for states to be cautious and assume that the final State Plan and certification must be submitted to the Commission by the end of the federal fiscal year (September 30) in which it hopes to receive a Requirements Payment.

- ! As stated above, the states must meet certain notice and comment requirements before they are allowed to submit their certification to the Commission. Below is an estimated time line for states to meet the notice and comment requirements of HAVA and still submit their plan before the end of the federal fiscal year:
 - " States should have a draft of their State Plan by the end of June/beginning of July and make the Plan available for the 30-day inspection required by HAVA. *42 U.S.C. § 15405*. The State will determine how they make their plan available (post on website, place notice in local papers, etc), but must publish some notice that the Plan is available for inspection.
 - " At the beginning of August, after the public comment and review period, the state should take about a week to read any remaining comments that they have not yet read and consider incorporating those comments into the State Plan.
 - " Around August 8, the state should send its plan to the Commission so that it may be published in the Federal Register for the 45-day period.
 - " The state should file its certification and final version of the State Plan with the Commission after the expiration of the 45 day period --approximately the last week of September, but no later than September 30, the end of the federal fiscal year.
- ! The specific methods of complying with the State Plan are left to the discretion of the state.
- ! States are not required to adopt the Commission's voluntary state guidelines in order to receive Requirements Payments.

Recommended Activities for P&As

- 1 The State Plan will be the state's roadmap for compliance, will set the state's priorities, and will deal with important issues such as poll worker training. P&As should request a seat on the State's Planning Committee to assure that the rights and interests of individuals with disabilities in their state are adequately represented.
- 1 A sample letter requesting a seat on a State Planning Committee appears at the end of this guide in Appendix B. Seats on the State Planning Committee can be

requested from the Chief Election Official of the state. (See Appendix C for officers designated as Chief Election officials in each State and territory.)

- t Monitor the Committee's progress and submit comments during the 30-day review period.

ACCESSIBILITY GRANTS FOR STATES AND UNITS OF LOCAL GOVERNMENT TO ASSURE ACCESS TO INDIVIDUALS WITH DISABILITIES (42 U.S.C. §15421)

- ! The Secretary of Health and Human Services (HHS) will make accessibility grants available to each eligible state and unit of local government to assure access to polling places to individuals with disabilities.
- ! The accessibility grants funds may be used by states and units of local government to:
 - " make polling places accessible (including the path of travel, entrances, exits, and voting areas of each polling facility) to individuals with disabilities (including the blind and visually impaired), in a manner that provides the same opportunity for access and participation, including privacy and independence, as is available for other voters;
 - " provide individuals with disabilities information and outreach programs about the accessibility of polling places; and
 - " train election officials, poll workers and election volunteers on how to best promote the access and participation of individuals with disabilities in elections.
- ! To be eligible for an accessibility grant a state or local government entity must submit an application to HHS describing the activities for which the payment is sought.
- ! No action can be brought against a state or local unit of government on the basis of any information contained in its application for accessibility funds, except for criminal acts or omissions.
- ! The accessibility grants are available for three (3) years. The amounts authorized to be appropriated for these grants are as follows:

- ! A nonparticipating state will be deemed out of compliance with Title III if the Attorney General does not approve the plan submitted by the state and the state has not otherwise certified to the Commission that the state has met the requirements regarding establishing a state-based administrative procedure to remedy grievances.

Recommended Activities for P&As

- 1 Review pitfalls of other existing state administrative grievance procedures and encourage states not to include such provisions in their HAVA grievance procedures.

Appendix A

HAVA STATUTORY PROVISION REGARDING VOTING P&A

42 U.S.C. § 15461

PART 5—PROTECTION AND ADVOCACY SYSTEMS

SEC. 291. PAYMENTS FOR PROTECTION AND ADVOCACY SYSTEMS.

(A) IN GENERAL.—IN ADDITION TO ANY OTHER PAYMENTS MADE UNDER THIS SUBTITLE, THE SECRETARY OF HEALTH AND HUMAN SERVICES SHALL PAY THE PROTECTION AND ADVOCACY SYSTEM (AS DEFINED IN SECTION 102 OF THE DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT OF 2000 (42 U.S.C.15002) OF EACH STATE TO ENSURE FULL PARTICIPATION IN THE ELECTORAL PROCESS FOR INDIVIDUALS WITH DISABILITIES, INCLUDING REGISTERING TO VOTE, CASTING A VOTE AND ACCESSING POLLING PLACES. IN PROVIDING SUCH SERVICES, PROTECTION AND ADVOCACY SYSTEMS SHALL HAVE THE SAME GENERAL AUTHORITIES AS THEY ARE AFFORDED UNDER SUBTITLE C OF TITLE I OF THE DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT OF 2000 (42 U.S.C. 15041 ET SEQ.).

(B) MINIMUM GRANT AMOUNT.—THE MINIMUM AMOUNT OF EACH GRANT TO A PROTECTION AND ADVOCACY SYSTEM SHALL BE DETERMINED AND ALLOCATED AS SET FORTH IN SUBSECTIONS (C)(3), (C)(4), (C)(5), (E), AND (G) OF SECTION 509 OF THE REHABILITATION ACT OF 1973 (29 U.S.C. 794E), EXCEPT THAT THE AMOUNT OF THE GRANTS TO SYSTEMS REFERRED TO IN SUBSECTIONS (C)(3)(B) AND (C)(4)(B) OF THAT SECTION SHALL BE NOT LESS THAN \$70,000 AND \$35,000, RESPECTIVELY.

(C) TRAINING AND TECHNICAL ASSISTANCE PROGRAM.—

(1) IN GENERAL.—NOT LATER THAN 90 DAYS AFTER THE DATE ON WHICH THE INITIAL APPROPRIATION OF FUNDS FOR A FISCAL YEAR IS MADE PURSUANT TO THE AUTHORIZATION UNDER SECTION 292, THE SECRETARY SHALL SET ASIDE 7 PERCENT OF THE AMOUNT APPROPRIATED UNDER SUCH SECTION AND USE SUCH PORTION TO MAKE PAYMENTS TO ELIGIBLE ENTITIES TO PROVIDE TRAINING AND TECHNICAL ASSISTANCE WITH RESPECT TO THE ACTIVITIES CARRIED OUT UNDER THIS SECTION.

(2) USE OF FUNDS.—A RECIPIENT OF A PAYMENT UNDER THIS SUBSECTION MAY USE THE PAYMENT TO SUPPORT TRAINING IN THE USE OF VOTING SYSTEMS AND TECHNOLOGIES, AND TO DEMONSTRATE AND EVALUATE THE USE OF SUCH SYSTEMS AND TECHNOLOGIES, BY INDIVIDUALS WITH DISABILITIES (INCLUDING BLINDNESS) IN ORDER TO ASSESS THE AVAILABILITY AND USE OF SUCH SYSTEMS AND

TECHNOLOGIES FOR SUCH INDIVIDUALS. AT LEAST ONE OF THE RECIPIENTS UNDER THIS SUBSECTION SHALL USE THE PAYMENT TO PROVIDE TRAINING AND TECHNICAL ASSISTANCE FOR NONVISUAL ACCESS.

- (3) ELIGIBILITY.—AN ENTITY IS ELIGIBLE TO RECEIVE A PAYMENT UNDER THIS SUBSECTION IF THE ENTITY—
- (A) IS A PUBLIC OR PRIVATE NONPROFIT ENTITY WITH DEMONSTRATED EXPERIENCE IN VOTING ISSUES FOR INDIVIDUALS WITH DISABILITIES;
 - (B) IS GOVERNED BY A BOARD WITH RESPECT TO WHICH THE MAJORITY OF ITS MEMBERS ARE INDIVIDUALS WITH DISABILITIES OR FAMILY MEMBERS OF SUCH INDIVIDUALS OR INDIVIDUALS WHO ARE BLIND; AND
 - (C) SUBMITS TO THE SECRETARY AN APPLICATION AT SUCH TIME, IN SUCH MANNER, AND CONTAINING SUCH INFORMATION AS THE SECRETARY MAY REQUIRE.

SEC. 292. AUTHORIZATION OF APPROPRIATIONS.

(A) IN GENERAL.—IN ADDITION TO ANY OTHER AMOUNTS AUTHORIZED TO BE APPROPRIATED UNDER THIS SUBTITLE, THERE ARE AUTHORIZED TO BE APPROPRIATED \$10,000,000 FOR EACH OF THE FISCAL YEARS 2003, 2004, 2005, AND 2006, AND FOR EACH SUBSEQUENT FISCAL YEAR SUCH SUMS AS MAY BE NECESSARY, FOR THE PURPOSE OF MAKING PAYMENTS UNDER SECTION 291(A); EXCEPT THAT NONE OF THE FUNDS PROVIDED BY THIS SUBSECTION SHALL BE USED TO INITIATE OR OTHERWISE PARTICIPATE IN ANY LITIGATION RELATED TO ELECTION-RELATED DISABILITY ACCESS, NOTWITHSTANDING THE GENERAL AUTHORITIES THAT THE PROTECTION AND ADVOCACY SYSTEMS ARE OTHERWISE AFFORDED UNDER SUBTITLE C OF TITLE I OF THE DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT OF 2000 (42 U.S.C. 15041 ET SEQ.).

(B) AVAILABILITY.—ANY AMOUNTS APPROPRIATED PURSUANT TO THE AUTHORITY OF THIS SECTION SHALL REMAIN AVAILABLE UNTIL EXPENDED. 42 USC 15462.

Appendix B

***** FORM LETTER TO CHIEF ELECTION OFFICIAL *****

Dear Mr./Mrs. _____:

We are writing to request a seat on the committee that will develop the State Plan required by the Help America Vote Act of 2002, *42 U.S.C. § 15301-15545* (HAVA).

As you are aware, HAVA makes federal funds available to states to assist them in complying with the Act's requirements. In order to receive these funds, [INSERT YOUR STATE NAME] must submit a State Plan to the Election Assistance Commission. HAVA mandates that the State Plan be developed through a committee of appropriate individuals, which includes "stake holders (including representatives of groups of individuals with disabilities)". *42 U.S.C. § 15405*. (Emphasis added)

[INSERT NAME OF P&A] is the federally mandated protection and advocacy system (P&A) for the state of [INSERT YOUR STATE NAME]. [INSERT NAME OF P&A] is authorized under various federal statutes to ensure the protection and advocacy of all individuals with disabilities in the state. Under HAVA, [INSERT NAME OF P&A] is charged with ensuring "the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places." *42 U.S.C. § 15461*. We believe that [INSERT NAME OF P&A] can be a great resource to [INSERT YOUR STATE NAME] in the state planning process because of our experience advocating for individuals with disabilities and the P&A's unique role under the Act.

While HAVA promises to have a dramatic impact on the conduct of elections in [INSERT YOUR STATE NAME], its mandates, including those that affect voters with disabilities, are vast and can be confusing. Adequate representation of affected constituencies is essential not only to help assure public confidence that implementation of the legislation will serve to further enfranchise the electorate, but will also assist [INSERT YOUR STATE NAME] in developing a plan that will ensure compliance with the Act's requirements.

We look forward to hearing from you soon regarding a seat on the committee. Please do not hesitate to contact us if you have any questions.

Sincerely,

Appendix C

Chief Elections Officials²

<i>Alabama</i>	Secretary of State
<i>Alaska</i>	Lieutenant Governor
<i>American Samoa</i>	<i>Unknown. Contact:</i> Soliai T. Fuimaono, Chief Election Officer PO Box 3790 Pago Pago AS 96799 011-684-633-1632; FAX 011-684-633-7118
<i>Arizona</i>	Secretary of State
<i>Arkansas</i>	Secretary of State
<i>California</i>	Secretary of State
<i>Colorado</i>	Secretary of State
<i>Connecticut</i>	Secretary of State
<i>Delaware</i>	State Commission of Elections
<i>District of Columbia</i>	Executive Director, Board of Elections and Ethics
<i>Florida</i>	Secretary of State
<i>Georgia</i>	Secretary of State
<i>Guam</i>	<i>Unknown. Contact:</i> Henry Torres Election Commission PO Box BG Agana, GU 96910
<i>Hawaii</i>	<i>Unknown. Contact:</i> Dwayne Yoshina, Chief Election Director Office of Elections 802 Lehua Avenue Pearl City, HI 96782 (808) 453-8683 FAX (808) 453-6006
<i>Idaho</i>	Secretary of State
<i>Illinois</i>	Executive Director, State Election Board

² For a state-by-state list of the name and address of State Election Directors that are members of the National Association of State Election Directors visit <http://www.nased.org/Memberlist.html>

Appendix C

<i>Indiana</i>	Secretary of State
<i>Iowa</i>	Secretary of State
<i>Kansas</i>	Secretary of State
<i>Kentucky</i>	Secretary of State
<i>Louisiana</i>	Bifurcated, currently Commissioner of Elections. This person leaves office the end of 2003 and it will become the Secretary of State.
<i>Maine</i>	Secretary of State
<i>Maryland</i>	Administrator of Elections
<i>Massachusetts</i>	Secretary of State
<i>Michigan</i>	Secretary of State
<i>Minnesota</i>	Secretary of State
<i>Mississippi</i>	Secretary of State
<i>Missouri</i>	Secretary of State
<i>Montana</i>	Secretary of State
<i>Nebraska</i>	Secretary of State
<i>Nevada</i>	Secretary of State
<i>New Hampshire</i>	Secretary of State
<i>New Jersey</i>	Attorney General
<i>New Mexico</i>	Secretary of State
<i>New York</i>	Executive Director, State Board of Elections
<i>North Carolina</i>	Executive Director, State Election Board
<i>North Dakota</i>	Secretary of State
<i>Ohio</i>	Secretary of State
<i>Oklahoma</i>	Secretary OR Chair (unclear, likely Secretary) State Election Board
<i>Oregon</i>	Secretary of State
<i>Pennsylvania</i>	Secretary of State

<i>Puerto Rico</i>	<i>Unknown. Contact:</i> Juan R. Melecio, President Puerto Rico State Election Commission P.O. Box 9066525 San Juan, PR 00906-6525 (787) 723-1006 FAX (787) 721-7940
<i>Rhode Island</i>	Bifurcated, currently unresolved struggle between Secretary of State and Board of Elections
<i>South Carolina</i>	Executive Director, State Board of Elections, position is currently vacant.
<i>South Dakota</i>	Secretary of State
<i>Tennessee</i>	Secretary of State
<i>Texas</i>	Secretary of State
<i>Utah</i>	Lieutenant Governor
<i>Vermont</i>	Secretary of State
<i>Virginia</i>	Secretary, State Board of Elections
<i>Washington</i>	Secretary of State
<i>West Virginia</i>	Secretary of State
<i>Wisconsin</i>	Chairperson, State Elections Board
<i>Wyoming</i>	Secretary of State