

Facts about The Help America Vote Act (HAVA)

HAVA¹, passed by Congress in the Fall 2002, was an attempt to prevent problems like those encountered in the 2000 Presidential election. It offered funding for counties to upgrade their voting systems, and it included some requirements as well. As states and localities rush to comply with HAVA, many decision-makers are operating on common misunderstandings of the law. The sections below provide facts that correct some of the major misconceptions.

HAVA Does Not Require the Use of DREs²

Section 301(a)(3) of HAVA requires that each polling place provide a voting method that allows disabled individuals to vote independently. Accessibility is required; DREs are not.

(3) Accessibility for individuals with disabilities.--The voting system shall—

(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;

(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system **or other voting system** equipped for individuals with disabilities at each polling place; and

Voting systems that record votes electronically (Direct Record Electronic - DRE) are only some of the many available voting systems that are billed as providing accessibility for disabled individuals. Alternative voting systems that allow the disabled to vote unassisted are available. Some cost a fraction of the price of DREs. For example:

- ◆ Electronic ballot-marking devices, such as the AutoMark³ or the Optical VoteTrakker.⁴
- ◆ Ballot templates (tactile ballots) like those used in Europe and Rhode Island.⁵
- ◆ Free ballot-printing software offered by Open Voting Consortium to run on PC systems.⁶

HAVA Does Not Prohibit Punch Card Systems

A common misconception is that HAVA bans the use of old voting systems. This is not true, although old systems must be supplemented with methods that allow disabled individuals to vote independently and they must provide a manual audit capacity. A state must replace old systems **only** if it accepts Title I funds to upgrade voting systems. Then, according to Section 102(a)(3), the current deadline for a funded replacement is:

- ◆ Before the first general federal election after January 1, 2006, if the state filed a waiver by January 1, 2004. This applies to almost all states.

While state legislation, executive orders, or judicial orders may require certain jurisdictions to replace their punch cards or lever systems, **HAVA does not make that requirement**. In fact, HAVA Section 301(a)(1)(B) specifically allows the use of punch card systems in conjunction with an educational program to help prevent over-voting and teach voters how to correct their ballots.

¹ http://www.fec.gov/hava/law_ext.txt

² Direct Recording Electronic voting machine. Votes are recorded on electronic media rather than paper.

³ <http://www.essvote.com/HTML/home.html>

⁴ http://www.vote-trakker.com/accessible_optical_voting.html

⁵ http://www.electionaccess.org/Bp/Ballot_Templates.htm

⁶ <http://www.openvotingconsortium.org/>

HAVA Allows Partial Replacement of Old Systems

If a state accepts Title I funds and does not meet the deadline for replacing punch card systems and lever systems, the state simply repays any replacement funds received for the **precincts** that did not meet the deadline. Section 102(d) states:

(1) In general.--If a State receiving funds under the program under this section fails to meet the deadline applicable to the State under subsection (a)(3), the State shall pay to the Administrator an amount equal to the noncompliant precinct percentage of the amount of the funds provided to the State under the program.

HAVA Preserves States' Right to Use Paper Ballots

Some election officials are under the impression that HAVA requires them to abandon paper-based systems. This is completely false. Not only does HAVA preserve the right to use paper ballots, it also requires paper for audits.

While HAVA does not specifically require a voter-verified paper trail, it does mandate that voting systems be able to produce a "permanent paper record with a manual audit capacity."

HAVA also explicitly preserves jurisdictions' rights to use paper ballots. Section 301(c)(2) specifically says that the term "verify" may not be construed to forbid the use of paper ballots. It states:

(2) Protection of paper ballot voting systems.--For purposes of subsection (a)(1)(A)(i), the term "verify" may not be defined in a manner that makes it impossible for a paper ballot voting system to meet the requirements of such subsection or to be modified to meet such requirements.

HAVA Sets an Accuracy Standard that All Jurisdictions Must Meet

The fact that HAVA requires independent voting methods for disabled individuals is well known and well publicized. However, there is also a less-publicized requirement for accuracy in counting ballots. Section 301(a) states that each voting system used in an election for Federal office shall meet the following requirement:

(5) Error rates.--The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.

The "error rate standards" referenced in Section 301(a)(5) allows a **maximum error rate of one in 500,000 ballot positions**.⁷ Note that the requirement applies to actual ballots cast by voters, not just test ballots.

The Election Assistance Commission has not yet established guidelines the states can use to ensure that their election equipment is counting ballots at or above the required accuracy standard. This means that the states or individual jurisdictions must develop methods by which they can ensure that they comply.

⁷ http://www.eac.gov/election_resources/v1/v1s3.doc