

## SUMMARY OF “THE HELP AMERICA VOTE ACT” OF 2002

In response to the controversial 2000 Presidential Election, Congress passed “The Help America Vote Act of 2002,” known as HAVA. This significant piece of national election reform affects nearly every facet of elections in the United States. Congress also recommended appropriating more than \$3.6 billion dollars to fund the reforms mandated in HAVA.

This document contains a section-by-section summary of HAVA, with notes in some areas about the status of those items in Mississippi. The second section contains additional information about some of the more significant elements of HAVA.

### *Section-By-Section Summary*

#### **TITLE I – Payments to States Election Administration Improvement and Replacement of Punch Card and Lever Voting Machines.**

- \$325 million dollars is authorized nationally to buy-out punch card and lever machines. States that apply for this program must complete the device replacement by the 2004 General Election, or apply for a waiver. The waiver gives states until January 1, 2006 to complete the replacement. The State may receive approximately \$4000 per qualifying precinct under this program (the amount of the appropriation, and the number of states electing to participate in the program, may change this amount)  
*Mississippi has approximately 550 precincts that used punch card or lever machines during the 2000 Presidential Election, which would qualify for this program.*
- \$325 million dollars is authorized nationally for states to improve the administration of elections.  
*Mississippi may use its share of these funds to improve elections in the state, so long as those activities are not inconsistent with HAVA or other relevant Federal laws.*

#### **TITLE II – Election Assistance Commission**

- A new Federal Commission is established, consisting of 2 Republican and 2 Democratic appointees.
- The Commission has no rulemaking authority, but will issue voluntary guidelines for voting systems and other HAVA requirements.
- The Commission will provide for the certification and testing of voting systems, will study election issues, and will administer grant programs in the following areas: Requirements Payments, Disability Access grants, Voting Technology Research grants, Pilot Program grants, Protection and Advocacy Systems Payments, and the National Student/Parent Mock Election.
- Each state must be represented by a state election official and a local election official, of different political parties, on the Election Assistance Commission Standards Board, which will be involved with review of voting systems and the establishment of voluntary guidelines.  
*Mississippi's representatives on the EAC Standards Board are Secretary of State Eric Clark (D) and Hinds County Election Commissioner Marilyn Avery (R).*
- Apart from the funds authorized under Title I, the following funds have been authorized for distribution to the states by the EAC
  - Fiscal Year 2003 – \$1.4 billion
  - Fiscal Year 2004 -- \$1 billion
  - Fiscal Year 2005 -- \$600 million

*The amount authorized and the amount appropriated may not be the same. For FY 2003, the amount authorized was \$1.4 billion, but Congress only appropriated \$800 million. It is unclear if the difference will be made up in supplemental appropriations.*

- States may be eligible for the Requirements Payment only after submitting a State Plan, which must include the following:
  1. How the requirements payment will be used.
  2. How the state will distribute the benefits of the funding to other entities within the state.
  3. How the state will provide for voter education and election official/poll worker training.
  4. How the state will adopt voting system guidelines that are consistent with federal requirements.
  5. How the state will establish a fund to accept Federal dollars.
  6. What the state's budget for required HAVA activities is.
  7. How the state will maintain its expenditure level so that it is not less than the expenditure level for the fiscal year ending prior to November, 2000.
  8. How the state will measure performance to determine success for the state and for local government in carrying out elements of HAVA and the Plan.
  9. A description of the uniform, non-discriminatory state-based administrative complaint procedure.
  10. If the state accepted any Title I money, how it was used and the impact on the Plan.
  11. How the state will conduct ongoing management of the Plan.
  12. If applicable, changes from the previous FY State Plan and a report on the previous FY State Plan success (for State Plans submitted in later fiscal years)
  13. A description of the committee that advised in the development of the State Plan.

### **TITLE III – Requirements**

Each state must:

- Provide voters an opportunity to check for and correct ballot errors in a private and independent manner.

*This is also called “second chance voting.” If a voter mistakenly over votes, or forgets to cast a vote in an election, the device will notify him/her in a private manner and allow for ballot correction.*

- Have a voting system with manual audit capacity.
- Provide at least 1 voting device per precinct that is accessible to the disabled.

*All voters, including individuals with disabilities, must be able to cast their votes unassisted and in private. Curb-side voting and voter assistance will not meet the requirements set in this section of HAVA.*

- Provide alternative language accessibility pursuant to the Voting Rights Act.

*Mississippi currently has 9 counties that have been identified by the U.S. Justice Department as requiring this type of action.*

- Have a voting system whose error rate does not exceed the existing rate established by the FEC Office of Election Administration.

*No such rate has been established. The EAC must issue guidance by January 1, 2004.*

**\*\*\*NOTE\*\*\* All states must meet Voting System Requirements by January 1, 2006. Any equipment purchased with funds received or appropriated under HAVA, and purchased after January 1, 2007, must meet ALL Voting System Standards requirements.**

- Define what constitutes a legal vote for each type of voting machine used in the state.

*With the exception of the new touch-screen DRE voting devices, this has been done in Mississippi.*

- Provide provisional ballots to ensure no individual is turned away at the polls. Counties must also provide a “free access system” by which voters who cast provisional ballots may find out

if their vote counted.

*Provisional balloting is done in Mississippi, and is known as “affidavit balloting.” There is no uniform method of free-access to affidavit balloting information currently prescribed in Mississippi.*

- Implement a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the state. This database will be used to ensure accurate voter registration lists for use at all elections. This list must be in place by January 1, 2004, unless the state applies for and receives a waiver to January 1, 2006.

*Mississippi passed enabling legislation in 2002 to begin work on such a system. The specifications for such a system prescribed by Mississippi’s Select Task Force on Election Procedures and Technology predated HAVA, but were nearly identical.*

Ensuring system integrity:

- When registering to vote, individuals must provide a driver’s license number or, if the voter does not have a driver’s license, the last 4 digits of the Social Security number. If an individual does not have either number, he or she will be assigned a unique identifier. This must be in place by January 1, 2004.
- First-time voters who register to vote by mail are required to provide identification when they cast their ballots. Jurisdictions must comply with this by January 1, 2004.
- States are obligated to maintain clean and accurate voter registration lists.

*This requirement is for Federal elections only.*

*HAVA requires that the state office that maintains the state list must enter into agreements with other state agencies that provide information relevant to keeping voter information accurate. Data-sharing must take place among these agencies. In addition, the Mississippi Department of Public Safety will have to enter into an agreement with the Social Security Administration to share data that is relevant to the maintenance of accurate voter records.*

#### **TITLE IV – Enforcement**

- The U.S. Department of Justice may seek injunctive or declaratory relief for violations of HAVA.
- Each state receiving funds under HAVA must establish a state-based Administrative Grievance Procedure for hearing complaints. Citizens who feel that there has been a violation of the standards set under Title III of HAVA may file a complaint. The State will have to conduct hearings and, where appropriate, provide remedy.

*There is no such procedure established under Mississippi law.*

#### **TITLE V – Help America Vote College Program**

\$5 million dollars authorized to encourage college students to participate in the political process by volunteering as poll workers.

#### **TITLE VI – Help America Vote Foundation**

\$5 million dollars authorized to encourage high school students to participate in the political process by volunteering as poll workers.

*Mississippi law was changed in 2002 to allow jurisdictions to create a Poll Worker Intern program, where 16- and 17-year-old students may be selected to serve as assistants at the polls on election day. No jurisdiction is required to participate in this program, and each jurisdiction may set up the program according to its own priorities.*

**TITLE VII – Military**

Provisions to improve ballot access for military and overseas voters.

**TITLE VIII – Transition Provisions**

Transfer of responsibilities and oversight of particular activities to new entities.

**TITLE IX – Miscellaneous**

- The Commission is authorized to conduct audits, including special audits, of all entities receiving funds.
- Criminal penalties are established for conspiracy to deprive voters of a fair election, and for providing false information in registering and voting.

## ***Significant Elements***

### **Enhancing Voting for Persons with Disabilities**

By building on provisions found in the Americans with Disabilities Act (ADA) and the Voting Accessibility for the Elderly and Handicapped Act (VAEHA), HAVA makes it easier for persons with disabilities to vote independently and privately. This legislation ensures that persons with disabilities have the same access to voting as other citizens. The “Help America Vote Act”:

- Requires that every precinct across the nation have at least one voting machine or system that is accessible to individuals with disabilities by January 1, 2006.
- Authorizes \$100 million in grants to improve polling place access for disabled voters.
- Authorizes an additional \$40 million to improve State Protection and Advocacy systems. Beginning in 2003, the Secretary of Health and Human Services will award this money in four allotments of \$10 million per year. The grants will be presented to entities in each state that represent persons with disabilities, and will be used to provide services that enable these individuals to participate fully in the electoral process.

### **Voter Rights**

- Second-Chance Voting – Each voter will be given an opportunity to check for and correct ballot errors in a private and independent manner.
- Provisional Ballots – An individual whose name does not appear on the official voter registration list will be given the opportunity to cast a provisional ballot, thereby ensuring that no individual is turned away at the polls.
- Access for Individuals with Disabilities – Each precinct will be required to provide at least 1 voting machine that allows individuals with disabilities to vote in a private and independent manner.

### **Voting System Standards**

- Audit Capacity – Each voting system must produce a permanent paper record with a manual audit capacity.
- Error Rates – Each voting system must comply with the existing error rate established by the FEC Office of Election Administration.
- Uniform Standard of What Constitutes a Vote – Each state must define what constitutes a legal vote for each type of voting machine used in the state.
- Multilingual Accessibility – Each voting system must provide alternative language accessibility pursuant to the Voting Rights Act.

### **Computerized Statewide Voter Registration List**

Each state must implement a single, uniform, official, centralized, interactive computerized statewide voter registration list to ensure accurate lists.

### **Voting Information Requirements**

By January 1, 2004, election officials must publicly post the following information at each polling place on election day:

- A sample ballot.
- The hours during which the polling place will be open.
- Instructions on how to cast a ballot or provisional ballot.
- Instructions for mail-in registrants who are first-time voters.
- General information on voting rights under federal and state laws.
- General information on prohibitions on fraud and misrepresentation.

## **Assistance for Military and Overseas Voters**

“The Help America Vote Act” contains provisions to improve ballot access for military and overseas voters. Both the Department of Defense (DOD) and states have requirements under these provisions.

### *Requirements for the DOD*

- Military Voting Assistance Officers must be guaranteed the time and resources they need to help military personnel vote.
- The DOD must make certain that all military ballots have postmarks (or other official proof of mailing date) to ensure that no ballots are disqualified for this reason.
- The DOD must provide military personnel with applicable deadlines and other timely information on registration and voting.
- New military enlistees must be given a voter registration form.

### *Requirements for States*

- States must establish a single state office mandated to provide information on registration and absentee voting, to make it easier for military personnel to access such information.
- States must report the number of military and overseas applications and ballot received to the Federal government.
- States must provide overseas absentee ballots for two Federal general elections to voters who request them. The current Mississippi absentee ballot application is good for only 1 year.
- States must accept a standard oath for verifying election materials.
- States may not refuse ballots for being submitted too early. Many military personnel are isolated for long periods of time (ex., submariners). This must be in place by January 1, 2004.
- States must notify overseas and military voters whose applications have been rejected. This requirement applies to both voter registration and absentee ballot applications.
- All items above are effective immediately, unless another effective date is listed.