

State Notes

TOPICS OF LEGISLATIVE INTEREST

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Updating Michigan's Voting Machine Technology **Joe Carrasco, Jr., Fiscal Analyst**

Introduction

If people remember the terms "hanging", "dimpled", and "pregnant chads", then they probably recall the problems of the November 2000 presidential election. In particular, someone might remember the recounting of the votes in Florida and the legal battle that ensued to determine the winner. Ultimately, on December 12, 2000, the United States Supreme Court ruled in *Bush v. Gore* (531 U.S. 98) that the Florida recount could be suspended, which led to the election of George W. Bush as the 43rd President of the United States. The problems of the November 2000 election in Florida exposed the antiquated voting systems that were being used across the country and contributed to the passage of the Help America Vote Act of 2002. The Help America Vote Act (HAVA) required all states to update their voting and election systems. This article will provide a brief background on HAVA, Michigan's plan, the growing need again to replace voting systems across Michigan, and the associated costs.

The Help America Vote Act

President Bush signed HAVA into law on October 29, 2002. Although the presidential election of 2000 was not the primary reason for the law's enactment, it was a contributing factor. The Help America Vote Act was implemented to accomplish three principal goals:

- To replace outdated and unreliable punch card and lever-based voting systems;
- To create the Election Assistance Commission to help with the administration of Federal elections and serve as a national clearinghouse and resource of information for election administration materials; and
- To create a mandatory minimum standard for election administration that all 50 states and local units of government would follow.¹

The Help America Vote Act required states to implement new programs and procedures to reform the voting process and to increase voter turnout and education. To accomplish this, states were required to develop a provisional voting system; make voting easily accessible and mainstream voting information; update and upgrade voting equipment; create a statewide voter registration database; streamline voter identification procedures; and develop administrative complaint procedures.

The law provided Federal funding to states to meet these goals and to purchase new voting machines. Michigan was ahead of the curve in terms of moving to modernized voting systems; before HAVA was enacted, however, over a quarter of Michigan's voting precincts still used voting systems that were seen as outdated. Of Michigan's 5,305 voting precincts, 866 (16.3%) used punch card systems; 445 (8.4%) used lever-style voting machines; and 98 (1.8%) used paper ballots in 2002.² The remaining precincts across Michigan (73.5%) were using an electronic form of voting system: either an optical scan system or a direct recording equipment (DRE) system using touchscreens.

In regard to voter registration and a voter information database, Michigan already had in place the Branch Office Voter Registration Program (VRP) and the Michigan Qualified Voter File (QVF). The

¹ Help America Vote Act of 2002, Public Law 107-252.

² Help America Vote Act, Michigan's State Plan; September 27, 2005; p. 1.

first of its kind in the United States, the Voter Registration Program allows people to register to vote or update their voter registration at any Secretary of State branch office. This program was a precursor to the motor/voter program mandated under the National Voter Registration Act of 1993.³

The VRP increased the number of new and updated voter registration transactions processed statewide. It also created a program that provided timely and updated voter registration information to each local clerk in the State; this increase in transactions increased workloads for Michigan's counties, cities, and townships. Local units of government across Michigan began to absorb increased costs related to maintenance of voter registration files. Public Act 441 of 1994 was enacted to further modernize this program. The Act required Michigan's Secretary of State to establish and maintain a statewide file of qualified voters and to create "a more centralized system of record-keeping and tracking of voter activity across the State".⁴ The legislation required the QVF to be in place for all elections held on or after January 1, 1998. Michigan did in fact have the QVF in place for those elections. Since its inception, Michigan's QVF has been viewed as a model nationally.

Michigan's Response to the HAVA Requirement of Replacing Voting Systems

In addition to the goals presented above regarding the Help America Vote Act, the Federal law was intended to strengthen the states' election process in three specific areas:

- Improving access at polling sites;
- Replacing old voting equipment; and
- Making it easier for people with disabilities and overseas military personnel to vote.

As mentioned earlier, Federal funding was provided in order for states to meet the goals and requirements of HAVA; however, to qualify for Federal funding, states had to submit to the Election Assistance Commission (EAC) a State Plan outlining how they would meet the Act's requirements. The State Plan was to be developed with the input of an advisory committee appointed by the chief elections official and include how the state would: meet technology and election administration requirements; budget and monitor the funds it would receive; adopt voting system guidelines consistent with the new Federal requirements under HAVA; educate voters and poll workers; adopt performance measures; and meet other specified requirements and criteria.⁵ Michigan submitted its State Plan to the EAC on December 19, 2003.⁶

Because Michigan already had in place the VRP and QVF systems, meeting the requirements of HAVA for these elements required less Federal funding than was needed by other states without established systems of these types. The primary use of the Federal funding Michigan received was to replace voting systems and improve access to polling sites, particularly for individuals with disabilities.

³ Help America Vote Act, Michigan's State Plan; September 27, 2005; p. 3.

⁴ Eric Limbs, *The Status of the Qualified Voter File*, Senate Fiscal Agency Issue Paper, June 1999, p. 1.

⁵ Michigan Secretary of State News Release; *Secretary Land Announces Help America Vote Act Advisory Committee*; March 20, 2003; <http://www.michigan.gov/sos/0,1607,7-127--63826--,00.html>.

⁶ The details of Michigan's State Plan can be obtained at http://www.michigan.gov/documents/HAVA_State_Plan_2005_110305_141231_7.pdf.



Federal Funding and Voting Machine Replacements

Federal funding was provided to Michigan via three separate grants related to the allowable use of the funds under HAVA Titles I, II, and III. Title I earmarked funds for election administration and replacement of punch card and lever-based voting machines. Title II funds were for the creation of the Election Assistance Commission and were distributed to assist states in complying with the EAC's requirements. Title III did not earmark any Federal funds but established new requirements in the areas of voting technology and election administration in Federal elections.⁷ The funding provided to Michigan is commonly referred to as Section 101 funds, Section 102 funds, and Section 251 funds. Section 101 and 102 funds are governed by the provisions in HAVA Title I while Section 251 funds are governed by HAVA Title II. (Appendix A contains details on allowable expenditures under these sections.)

Section 101 funds were primarily used to improve the administration of Federal elections. These funds did not require a state match and were less restrictive than Section 102 and 251 funds. Section 102 funds also did not require a state match and were used for the replacement of punch card and lever-based voting machines. Section 251 funds, which required a 5% state match, were distributed based on a formula of Michigan's voting age population compared to the voting age population of all the states.

According to the Election Assistance Commission, "Generally, the funds are to be used to procure voting systems that comply with the requirements of Title III, Section 301 Voting System Standards of HAVA; implement provisional voting (i.e., allowing a voter whose registration status cannot be confirmed to cast a provisional ballot); provide information to voters in the polling place such as general information on voting rights; develop and implement a computerized statewide voter registration list; and implement identification requirements for first-time voters who register to vote by mail."⁸

Of the nearly \$3.3 billion of HAVA funds distributed to all the states under Sections 101, 102, and 251, Michigan received a total of approximately \$104.2 million from 2003 to 2011. Table 1 illustrates the funds received by type.

Table 1

Help America Vote Act (HAVA) Title I and Title II Funds Awarded and Disbursed to Michigan by the U.S. Election Assistance Commission (Updated as of May 1, 2015)				
Total Required 5% State Match	Total Sec. 251 Funds Received	Total Sec. 101 Funds Received	Total Sec. 102 Funds Received	Total HAVA Funds Received
\$4,661,867	\$88,535,685	\$9,207,323	\$6,432,323	\$104,175,331

Source: Michigan Department of State, derived from actual receipts from the U.S. Election Assistance Commission

⁷ *The E-book on Election Law, Part 5: Voting Procedures*; The Ohio State University, 2004 e-book. <http://moritzlaw.osu.edu/electionlaw/ebook/part5/hava.html>

⁸ U.S. Election Assistance Commission, *Strengthening the Electoral System One Grant at a Time: A Retrospective of Grants Awarded by EAC April 2003-2010*; Appendix B, p. 4.



Appendix B details the amount of HAVA funds received by all of the states under Sections 101, 102, and 251.

Michigan purchased and replaced voting systems statewide between 2004 and 2006 using the Federal funding provided through HAVA. From the total HAVA funds Michigan received, nearly \$34.3 million, or 32.9%, was used to purchase optical scan voting systems, which also then converted Michigan to a uniform voting system statewide. Table 2 shows the portion of each fund that was used to replace voting machines.

Table 2

Michigan HAVA Funds Awarded and Amount of Each Fund Spent on Voting Machine Replacement and Installing Accessible Voting Machines					
Source of Federal Funds	Total Funding Received	Amount of Funding Used to Replace Standard Voting Machines	Percent of Funds used on Standard Machine Replacements	Amount of Funding Used to Install Accessible Voting Machines	Percent of Funds Used to Install Accessible Voting Machines
Sec. 101	\$9,207,300	\$560,000	6.1%	N/A	N/A
Sec. 102	6,432,300	6,400,000	99.5	N/A	N/A
Sec. 251	88,535,700	27,300,000	30.8	27,400,000	30.9%
Total	\$104,175,300	\$34,260,000	32.9%	\$27,400,000	26.3%
Total HAVA funds received.....					\$104,175,300
Funding spent on voting machine replacement.....					(61,660,000)
Other HAVA expenditures.....					(17,500,000)
HAVA balance remaining					\$25,015,300

Source: Michigan Department of State, derived from actual receipts from the U.S. Election Assistance Commission

In addition, \$27.4 million of the Section 251 funds (or 26.3% of the total) was used to purchase and implement fully accessible voting systems for use by individuals with disabilities. As noted in Appendix A, one of the allowable uses of Title II funds is to make polling places themselves more accessible in order to provide an equal opportunity and equal access to participation to individuals with disabilities. Thus, nearly \$61.7 million, or 59.2%, of the total Federal funding provided to Michigan was used to replace voting equipment and to make polling places more accessible to individuals with disabilities. The remaining \$42.5 million, or 40.8%, of the Federal funding received was used to comply with additional requirements of HAVA, such as voter registration, election administration, provisional voting, and preparation of the State Plan. While some of the original HAVA funding remains, HAVA funds notably were spent to develop and deploy electronic pollbooks, make continual improvements to the State's Qualified Voter File, develop and implement an online continuing training and education program for clerks statewide, and provide for ongoing voting system service and maintenance.

Further, Title II includes Section 261 and Section 291 funds, which were used to make grants to states and state protection and advocacy systems to promote voting access for individuals with disabilities. These funds were distributed by the U.S. Department of Health and Human Services and are not included in the amounts discussed above (although the permissible uses are detailed in Appendix A).

Voting Systems, their Expected Usefulness, and Estimated Costs of Replacement

It is generally agreed across the nation that the majority of the voting systems purchased with the HAVA funding provided from 2004 to 2006 are beginning to reach the end of their useful life. A January 2014 bipartisan report by the Presidential Commission on Election Administration issued a warning that an "impending crisis" was looming due to the widespread degradation of voting machines purchased over a decade ago. The report noted that jurisdictions do not have the funds to purchase new machines.⁹

As mentioned earlier, Michigan used Federal funds to replace voting systems statewide with a uniform system (optical scan) and systems specifically designed to be fully accessible for individuals with disabilities. According to the Department of State, these systems are due for replacement with new systems that provide better software and several other notable improvements, "especially with respect to the processing of optical scan ballots, the programming of voting systems and the resulting compilation and transmittal of election night results, and the options available to disabled voters".¹⁰ For example, the machines purchased between 2004 and 2006 use Microsoft Windows XP for their operating system. Windows XP has not been available for purchase since 2008, however, and Microsoft has not provided support or security updates since 2014.

The Department of State has estimated the cost of replacing all voting equipment across the State to be approximately \$55.0 million to \$60.0 million. As shown in [Table 2](#), nearly \$34.3 million was spent on the replacement of standard voting machines, which included the replacement of punch card and lever-based voting systems, and \$27.4 million was spent on the installation of voting machines that were fully accessible to people with disabilities. The \$61.7 million total that was spent for replacements between 2004 and 2006 included replacing voting equipment in 5,300 precincts. Due to redistricting of legislative and congressional districts after the 2010 census, consolidation of voting precincts took place in several jurisdictions and dropped the number of precincts in 2015 to fewer than 5,000. Thus, the Department's estimated cost of \$55.0 million to \$60.0 million to replace both standard and accessible voting machines across the State is based on this lower number of precincts.

Michigan is unique in that an estimated \$25.0 million of the State's HAVA funding remains unspent. The HAVA funds that remain after all of the Act's requirements have been met may be used by states for any election or voting costs in future years, which includes voting system replacement. Thus, Michigan's \$25.0 million in remaining HAVA funds will be used for the replacement of voting machines across the State. The Department of State anticipates that the purchase and replacement of voting machines across the State will be a process across multiple fiscal years.¹¹

Given the \$25.0 million in Federal HAVA funds in reserve, the Department of State estimates that it would need approximately \$30.0 million to \$35.0 million in additional State funding to meet the cost of replacing all voting machines across the State. In fact, the Michigan Senate included a \$10.0 million appropriation for voting machine replacements in its budget recommendation for FY 2015-16 but ultimately that funding was eliminated by the conference committee and not included in the final FY 2015-16 enacted budget.

⁹ Lawrence Norden and Christopher Famighetti, *America's Voting Machines At Risk*, Brennan Center for Justice at New York University School of Law, September 2015, p. 4.

¹⁰ Michigan Department of State, *Voting Equipment Summary Information*, April 2015, p. 1.

¹¹ Ibid.



Finally, the Department of State, in conjunction with the Michigan Department of Technology, Management, and Budget, has begun the process of coordinating a State-level bid and contract process (similar to the one used for the original replacement of voting systems from 2004 to 2006). The Department of State would like all of the new voting machines to be in place by the general election in November 2018. To meet that goal, the Department would need a commitment from the State that the additional \$30.0 million to \$35.0 million in funding would be provided in the next two or three budget cycles.

Conclusion

Though the 2000 presidential election was not the sole reason for the enactment of HAVA in 2002, it was a defining moment that magnified the voting system problems that existed across the nation and exposed the antiquated systems that were in place at the time. The result of HAVA provided states across America with nearly \$3.3 billion not only to replace voting systems, but also to create a better system to administer elections and to strengthen the election process nationwide.

As noted, Michigan received a total of \$104.2 million in Federal HAVA funds. Of that amount, \$34.3 million was used to replace punch card and lever-based systems and other standard voting equipment. In addition, \$27.4 million of the total was used to install voting machines that were fully accessible to individuals with disabilities as required under HAVA. An additional \$17.5 million was spent on meeting other requirements of HAVA, while \$25.0 million remains unspent.

Due to the expected life cycle of the voting machines replaced more than a decade ago, the time has come for Michigan to begin the process of replacing those systems. The Michigan Department of State estimates that replacement cost at \$55.0 million to \$60.0 million. The plan is to replace those systems on a rolling basis over a three- to four-year period. The Department has retained an estimated \$25.0 million of the original HAVA funds received that can be used for those costs. The goal of having all the voting systems across Michigan replaced by the general election in November 2018 will require additional State funding of an estimated \$30.0 million to \$35.0 million. The decision to appropriate the funds ultimately will be made by the Michigan Legislature.

Permissible Uses of HAVA Funds Made Available to States	
HAVA Program	Permissible Uses
Title I, Section 101 <i>Election Administration Improvement Payments</i>	<ul style="list-style-type: none"> • Complying with the requirements under Title III (uniform and nondiscriminatory election technology and administration requirements). • Improving the administration of elections for Federal office. • Educating voters concerning voting procedures, voting rights, and voting technology. • Training election officials, poll workers, and election volunteers. • Developing the State Plan for requirements payments to be submitted under part 1 of subtitle D of Title II. • Improving, acquiring, leasing modifying, or replacing voting systems and technology and methods for casting and counting votes. • Improving the accessibility and quality of polling places, including providing physical access for individuals with disabilities, providing nonvisual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and individuals with limited proficiency in the English language. • Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to obtain detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.
Title I, Section 102	Only to replace punchcard and lever voting systems
Title II, Section 251 <i>Requirements Payments</i>	<p>Only to meet HAVA Title III requirements for:</p> <ul style="list-style-type: none"> • Equipment that meets voting systems standards; • Provisional voting; • Voting information; • Statewide voter registration list; • Voters who register by mail. <p>Exception: State may use these funds for other improvements to the administration of Federal elections after meeting the Title III requirements, or if the amount is not more than the minimum payment (2003 = \$4,150,000; 2004 = \$7,229,205; Total = \$11,596,803)</p>
Title II, Section 261 <i>Access to Polling Places</i>	<ul style="list-style-type: none"> • Making polling places (including the path of travel, entrances, exists, and voting areas of each polling facility) accessible 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 for other voters. • Providing individuals with disabilities, including the blind and visually impaired, with information about the accessibility of polling places, including: <ul style="list-style-type: none"> ○ outreach programs to inform the individuals about the availability of accessible polling places; ○ training election officials, poll workers, and election volunteers on how best to promote the access and participation of individuals with disabilities in elections for Federal office.
Title II, Section 291 <i>Made available to state protection and advocacy systems</i> <i>Made available via competitive grant to qualifying entities</i>	<p>The remainder, to ensure full participation in the electoral process for individuals with disabilities, including:</p> <ul style="list-style-type: none"> • Registering to vote; • Casting a vote; • Getting to polling places. <p>Also, 7% for set aside for training and technical assistance with respect to the participation of individuals with disabilities, including nonvisual access, to:</p> <ul style="list-style-type: none"> • Support training in the use of voting systems and technologies; • Demonstrate and evaluate the use of such systems and technologies, by individuals with disabilities, in order to assess the availability and use of such systems and technologies for individuals with disabilities.

Source: U.S. Election Assistance Commission, February 2005

Help America Vote (HAVA) Title I and Title II Funds Awarded and Disbursed to States by the U.S. Election Assistance Commission					
State	Total Required State Match	Total Sec. 251 Funds Received ¹⁾	Total Sec. 101 Funds Received ¹⁾	Total Sec. 102 Funds Received ¹⁾	Total HAVA Funds Received ¹⁾
Alabama	\$2,118,275	\$40,227,862	\$4,989,605	\$919	\$45,218,386
Alaska	685,698	13,021,803	5,000,000	0	18,021,803
American Samoa	0	2,490,652	1,000,000	0	3,490,652
Arizona	2,396,942	45,516,687	5,451,369	1,564,188	52,532,244
Arkansas	1,276,077	24,233,666	3,593,165	2,569,738	30,396,569
California	15,598,713	296,375,483	27,340,830	57,322,707	381,039,020
Colorado	2,040,372	38,767,048	4,860,301	2,177,095	45,804,444
Connecticut	1,637,361	31,095,158	5,000,000	0	36,095,158
Delaware	685,698	13,021,803	5,000,000	0	18,021,803
District of Columbia	685,698	13,021,803	5,000,000	0	18,021,803
Florida	7,822,794	148,633,048	14,447,580	11,581,377	174,662,005
Georgia	3,823,255	70,674,392	7,816,328	4,740,448	83,231,168
Guam	0	2,319,361	1,000,000	0	3,319,361
Hawaii	685,698	13,028,257	5,000,000	0	18,028,257
Idaho	685,698	13,021,803	5,000,000	0	18,021,803
Illinois	5,820,904	110,597,147	11,129,030	33,805,617	155,531,794
Indiana	2,866,637	54,440,283	6,230,481	9,522,394	70,193,158
Iowa	1,402,415	26,645,880	5,000,000	0	31,645,880
Kansas	1,264,917	24,033,425	5,000,000	0	29,033,425
Kentucky	1,943,120	36,901,642	4,699,196	469,229	42,070,067
Louisiana	2,071,080	39,350,512	4,911,421	7,351,684	51,613,617
Maine	685,698	13,021,803	5,000,000	0	18,021,803
Maryland	2,508,588	47,663,156	5,636,731	1,637,609	54,937,496
Massachusetts	3,083,661	57,005,182	6,590,381	1,519,497	65,115,060
Michigan	4,661,867	88,535,685	9,207,323	6,432,323	104,175,331
Minnesota	2,313,800	43,962,194	5,313,786	0	49,275,980
Mississippi	1,324,437	25,152,465	3,673,384	1,778,067	30,603,916
Missouri	2,652,363	50,394,880	5,875,170	11,472,841	67,742,891
Montana	685,698	13,028,257	5,000,000	0	18,028,257
Nebraska	812,758	15,442,404	5,000,000	0	20,442,404
Nevada	955,560	18,155,632	5,000,000	0	23,155,632
New Hampshire	685,698	13,021,803	5,000,000	0	18,021,803
New Jersey	4,018,969	76,360,392	8,141,208	8,695,609	93,197,209
New Mexico	844,090	15,599,671	5,000,000	0	20,599,671
New York	9,056,679	172,076,865	16,494,325	49,603,917	238,175,107
North Carolina	3,866,319	73,421,775	7,887,740	893,822	82,203,337
North Dakota	685,698	13,028,257	5,000,000	0	18,028,257
Ohio	5,372,100	102,069,874	10,384,931	30,667,664	143,122,469
Oklahoma	1,633,847	30,200,723	5,000,000	0	35,200,723
Oregon	1,644,374	31,243,106	4,203,776	1,815,796	37,262,678
Pennsylvania	5,937,992	112,821,809	11,323,168	22,897,794	147,042,771
Puerto Rico	308,856	5,868,252	3,151,144	0	9,019,396
Rhode Island	685,698	13,021,803	5,000,000	0	18,021,803
South Carolina	1,914,980	36,384,617	4,652,412	1,998,330	43,035,359
South Dakota	685,698	13,021,803	5,000,000	0	18,021,803
Tennessee	2,730,408	51,877,746	6,004,507	2,473,971	60,356,224
Texas	9,486,939	180,251,801	17,206,595	6,266,685	203,725,080
Utah	973,242	18,481,440	3,090,943	5,726,844	27,299,227
Vermont	685,698	12,453,257	5,000,000	0	17,453,257
Virginia	3,394,700	64,499,288	7,105,890	4,526,569	76,131,747
Virgin Islands	0	2,319,361	1,000,000	0	3,319,361
Washington	2,787,119	52,955,253	6,098,449	6,799,430	65,853,132
West Virginia	904,472	17,184,960	2,977,057	2,349,474	22,511,491
Wisconsin	2,543,112	48,296,088	5,694,036	1,308,810	55,298,934
Wyoming	685,698	13,028,257	5,000,000	0	18,028,257
Total	\$136,728,170	\$2,599,267,572	\$349,182,262	\$299,970,448	\$3,248,420,282

¹⁾ Updated as of May 1, 2015

Source: U.S. Election Assistance Commission

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www.senate.michigan.gov/sfa