

# **HELP AMERICA VOTE ACT OF 2002**

## **TENNESSEE'S STATE PLAN**

**PUBLIC COMMENT AND REVIEW  
JUNE 16, 2003 thru JULY 15, 2003**

As required by Public Law 107-252,  
Help America Vote Act 2002, Section 253 (b)

Riley C. Darnell, Secretary of State  
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State of Tennessee  
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Fellow Tennesseans:

In 2000, our nation faced new and challenging questions in the electoral process. In order to address these issues, President Bush signed into law the Help America Vote Act of 2002 (HAVA). This bill requires mandatory changes and improvements in the electoral process.

HAVA requires each state to develop a State Plan which addresses how the state will implement these mandatory requirements. A committee of state and county officials along with representatives from interest and advocacy groups has been working diligently to submit this preliminary plan for your review.

Many might ask in these difficult budgetary times how Tennessee will be able to afford these changes. As part of this Act, the federal government will provide funds to each state that submits a State Plan. These funds will serve as a foundation as Tennessee builds a stronger, more unified voting process.

I am pleased to say that here in Tennessee many of the federal election reforms are already in place and being administered at both the local and state levels. However, this Act will bring about significant changes which will serve to strengthen the foundation of our electoral process. Some of these changes include the replacement of all punchcard and lever voting systems, a statewide voter registration list, the implementation of provisional voting, and a uniform complaint grievance process.

This State Plan sets out the requirements mandated by the federal government and the specific steps we are taking to bring Tennessee into compliance with HAVA. However, the plan will not be complete until it is reviewed by you, the citizens of Tennessee. The plan will be available for your review from June 16, 2003, to July 15, 2003.

I look forward to your thoughts and ideas on how we can better Tennessee's electoral system. Although there is much work ahead, I look forward to meeting the challenges of HAVA and to improving this nation's electoral process by making Tennessee a strong leader in election reform.

Sincerely,

Brook K. Thompson  
Coordinator of Elections

# **PRESS RELEASE**

**JUNE 13, 2003**

## **SECRETARY OF STATE**

### **STATE ELECTIONS DIVISION**

#### **PUBLIC NOTICE OF PRELIMINARY STATE PLAN**

This public notice is in accordance with the Help America Vote Act of 2002 (HAVA). According to Section 256 of HAVA, a preliminary version of the State Plan must be available for public inspection and comment thirty (30) days prior to the submission of the plan to the federal commission.

The preliminary version of the plan will be available for inspection and public comment from June 16, 2003, to July 15, 2003. The plan will be posted online at the official State website, <http://www.state.tn.us/sos/election.htm>. The plan will also be available through the Secretary of State, Division of Elections, at (615) 741-7956 and at all local county election offices. Copies of the plan may be mailed, emailed, or faxed. Public comments may be sent to:

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Division of Elections  
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9<sup>th</sup> Floor, William R. Snodgrass Tower  
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#### **SUMMARY:**

On October 29, 2002, President Bush signed into law the Help America Vote Act of 2002, which requires mandatory changes and improvements in the electoral process. In order to make these improvements, the federal government will provide funds to the individual states. These funds will be used to improve voting systems, to implement provisional voting, and to establish a statewide voter registration database. In order to qualify for funds under Title III, each state must design a long-range plan for implementing the Act.

An advisory committee was established for the purpose of assisting in the drafting of Tennessee's State Plan. The empanelled committee included 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. All public comments will be reviewed and taken into consideration in preparing the final draft. The final draft will be submitted to the Election Assistance Commission for publication in the Federal Register.

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# HELP AMERICA VOTE ACT OF 2002

## TENNESSEE'S STATE PLAN

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### STATE PLAN REQUIRED ELEMENTS:

**HELP AMERICA VOTE ACT SECTION 254(a)** – The State Plan shall contain a description of each of the following:

- (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.*

Pursuant to Title III each State must establish uniform and nondiscriminatory election standards. HAVA requires each state to comply with certain minimum standards when implementing its voting systems. Included in this process will be the replacement of all punchcard and lever voting devices. Title III further mandates that voting systems be accessible to individuals with disabilities. Tennessee will also be required to define what constitutes a vote, implement provisional voting, and maintain a statewide voter registration system.

#### **A. Voting System Standards**

Section 301(a) of HAVA requires each voting system, whether it be lever, optical scan, or direct recording (DRE), to (1) permit the voter to verify the votes selected by the voter on the ballot before the ballot is cast and counted; (2) provide the voter the opportunity to change the ballot or correct any error before the ballot is cast and counted; and (3) if the voter attempts to vote for more than one candidate for a single office, the system must notify the voter of the overvote before the ballot is cast and counted and provide the voter the opportunity to correct the ballot before it is cast and counted. HAVA defines a voting system in Section 301(b) as “ (1) the total combination of mechanical, electromechanical, or electronic equipment (including software, firmware, and documentation required to program, control, and support the equipment) that is used (A) to define ballots; (B) to cast and count votes; (C) to report or display election results; and (D) to maintain and produce any audit trail information; and (2) the practices and associated documentation used (A) to identify system components and versions of such components; (B) to test the system during its development and maintenance; (C) to maintain records of system errors and defects; (D) to determine specific system changes to be made to a system after the initial qualification of the system; and (E) to make available any materials to the voter (such as notices, instruction, forms, or paper ballots).”

Each voting system must also be accessible for individuals with disabilities and have an audit capacity.

Currently in Tennessee, many counties meet several of the requirements set forth in HAVA. Many of our counties use a direct recording electronic voting system (hereinafter DRE), i.e., the Electronic Danaher or the Microvote system, which complies with the general requirements of Section 301 of HAVA. Approximately forty-one counties (1,357 precincts) out of the State's ninety-five counties, or approximately 43% of the State, use one of the above voting systems. These machines comply fully with Section 301 (a) (1) (A) (i), (ii), and (iii). In order to fully comply with Section 301 (a) (3), the State will ensure that at least one direct recording electronic voting system which meets the accessibility requirement for persons with disabilities will be placed in each precinct.

Tennessee also uses Optical Scan voting systems, i.e., Optical Scan ESS Central Count and Optical Scan ESS Precinct Count. The Optical Scan Precinct Count systems are in compliance with Section 301 (a) (1) (A) (i), (ii), and (iii). In order to fully comply with HAVA Section 301(a) (3), which mandates that the voting system be accessible for individuals with disabilities, counties using the precinct count system will need to purchase for each precinct at least one DRE system which meets this requirement. Those counties which use the Optical Scan Central Count system will have the option of either changing the voting system to an Optical Scan Precinct Count, which would bring them into compliance with Section 301 (a) (1) (A) (i), (ii), and (iii) of HAVA, or revamping their voting system by changing to one that uses all DRE's in every precinct. (At least one of the DRE's used by these precincts will need to comply with the requirement found in Section 301 (a) (3).) If the counties choose to switch to a precinct count voting system, one DRE machine will need to be purchased for each precinct which is accessible for individuals with disabilities and in compliance with Section 301(a) (3).

Finally, those counties which use either a lever or punchcard voting system will need to replace their entire voting system with one that complies with Section 301 of HAVA. These counties will have the option of either choosing an Optical Scan Precinct Count voting system with a DRE in each precinct which meets the requirements of Section 301 (a) (3) or purchase all DRE's which meet all the requirements of Section 301. Tennessee has submitted its application for monies under Title I and plans to use that money to purchase voting systems which fully comply with the Act.

Section 301(a) (4) mandates that the voting system provide alternative language accessibility. Although Tennessee has no jurisdiction that falls under the minority language provisions of the Voting Rights Act and therefore we are not required to comply with the alternative language provision of this Act, Tennessee will strive to purchase voting systems with the capability of meeting this requirement should the situation arise in the future. Once the above is complete, all ninety-five counties will be in full compliance with the voting system requirements of HAVA.

Tennessee Code Annotated §2-7-133 complies with Section 301 (a) (6), which requires each state to adopt a uniform definition as to what constitutes a vote.

## **B. Provisional Voting and Voting Information Requirements**

Section 302 of HAVA requires each state to allow an individual claiming to be a registered voter in the jurisdiction where the individual desires to vote and is eligible to vote, but whose name does not appear on the official voter registration list, to cast a provisional ballot. The provisional ballot will then be verified by the appropriate State or local election official and, if the voter is deemed to have been eligible to vote, then the ballot will be counted. If the voter is deemed to be ineligible, for whatever reason, the ballot will not be counted; however, the voter may inquire as to if and why the vote was not counted.

Prior to HAVA, Tennessee did not have a process for provisional voting. In order to comply with Section 302 (a) of HAVA, Tennessee submitted legislation to its General Assembly in March 2003. House Bill 1806/Senate Bill 1782 was passed by the 103<sup>rd</sup> General Assembly and provisional voting became effective July 1, 2003. (See Appendix A-Chapter No. 352). In conjunction with our new provisional law, a voter will be able to call the local election commission where the provisional ballot was cast and obtain information on whether the vote counted and, if the vote was not counted, the reasons why the vote was not counted. Our State law also requires us to mail a notice to any voter whose vote does not count and the reasons that the vote was not counted.

Section 302 (b) (2) mandates that certain voting information be publicly posted at each polling place on the day of each election for Federal office. That information includes a sample version of the ballot for that election; the date of the election and the hours which the polling place will be opened; instructions on how to vote, including a provisional ballot; instructions for mail-in registrants and first-time voters; general information on voting rights and general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation. Tennessee currently requires a sample version of the ballot that will be used for that election to be posted along with information regarding the date and hours of the polling places. Prior to the implementation of HAVA and currently, Tennessee Code Annotated § 2-2-115(b)(7) requires any voter who registers by mail to vote in person in the first election the person votes in after such registration becomes effective. Therefore, Tennessee does not require voters to submit documentation with their ballots because all voters who register by mail must vote the first time in person at their appropriate polling places with their appropriate documentation. In order to bring Tennessee into full compliance, we will promulgate rules regarding instructions on how to vote, including a provisional ballot, and all general information on Federal and State laws regarding voting rights and acts of fraud and misrepresentation.

**C. Computerized Statewide Voter Registration List Requirements and Requirements for Voters who Register by Mail**

Section 303 of HAVA requires each State to implement a uniform and nondiscriminatory “single, . . . official, centralized, interactive computerized statewide voter registration list” which is maintained at the State level and contains the name of every registered voter and assigns a unique identifier to every voter. This list shall serve as the official voter registration list for all elections for Federal office in the State of Tennessee.

Currently Tennessee has a statewide voter registration database. This list is compiled at the county level. Each county is responsible for compiling a voter registration list which contains the name of every registered voter in that particular county. Each county maintains the list and updates the voter registration records. These lists are accessible at the state level as a public record. In maintaining these lists, each county complies with the National Voter Registration Act of 1993 in removing any name from the list pursuant to Tennessee Code Annotated § 2-2-106. Tennessee Code Annotated § 2-2-106 fully complies with the list maintenance requirements found in Section 303. Tennessee also is permitted to use social security numbers on applications for voter registration and will use this number as its unique identifier.

Since Tennessee already has a strong base on which to build, the State plans to enhance its current system to bring Tennessee into full compliance with all of HAVA’s requirements. Tennessee will establish a statewide voter registration list which is maintained at the State level and which assigns a unique identifier, one’s social security number, to each registered voter in the State. This system will have immediate electronic access and will be updated regularly. Tennessee will also enhance the already established agreements between the Department of Safety and other motor voter agencies within the State.

HAVA Section 303(b) requires certain standards for voters who register by mail. In Tennessee, Tennessee Code Annotated § 2-2-116 requires each voter who registers by mail to appear in person to vote in the first election after which that registration becomes effective. The voter must also present satisfactory proof of identity at the polling place. Therefore, Tennessee will continue to require proper identification at each election.

(2) *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).*

**(A) Eligibility for requirements payment**

The Secretary of State through the Coordinator of Elections will manage the allocation of the requirements payment. The Coordinator of Elections will be responsible for the management of the funds, the allocation of the funds, and the monitoring of the funds and their performance goals.

Each county will be required to sign an agreement with the Secretary of State prior to the receipt of HAVA funds. This agreement will mandate that the county will meet all the requirements set out in this State Plan. Counties must agree to purchase certified voting systems, comply with provisional voting, and maintain a compliant voter registration list. Each county will be required to submit a semiannual report on its performance goals. Monies that are distributed to the counties for training and education will be allocated based on the voting age population; however, Tennessee reserves the right to set minimum amounts for smaller counties.

**(B) Performance methods**

The methods to be used are detailed in Section 8 of the State Plan. These methods will help the State monitor the effectiveness of the distribution of funds.

- (3) *How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of title III.*

**A. VOTER EDUCATION**

Tennessee currently provides voters information through published sample ballots and postings at polling places. Additionally, the Division of Elections maintains a website with relevant electoral information. It is our intent to develop programs which will reach the voters of Tennessee. The Secretary of State will explore various approaches, including public announcements and mailings, as an opportunity to educate our voters on the new developments that HAVA brings to the State. Statutorily required postings at polling places will be updated to reflect the requirements of HAVA.

**B. ELECTION OFFICIALS AND POLL WORKERS**

Tennessee Code Annotated §2-12-201 requires all county administrators of elections to attend educational seminars to gain knowledge of all current laws. The seminars are held through the Secretary of State and are conducted by the Coordinator of Elections and its staff. Every year all certified administrators are required to attend an education/training seminar. This seminar includes an update on all current laws and procedures. The administrators are supplied with training materials for use throughout the year.

At the county level, Tennessee Code Annotated §2-4-108 requires the county election commission to hold a meeting within thirty days before the election to instruct election officials as to their duties during the election. This process will continue, with an emphasis being placed on the requirements of HAVA.

With the implementation of HAVA, the Coordinator of Elections will provide additional training on these requirements. Included in this training will be information on the implementation of provisional voting, who can cast a provisional ballot, and the requirements that must be met prior to election day. If counties are to receive new voting systems, training will include information on the new voting systems. We will further address the need to educate poll officials as to their duties regarding the new voting systems both on election day and during early voting. Finally, we will be working hand in hand with the county-level administrators in implementing the statewide voter registration list.

Tennessee realizes that the success of HAVA will have its cornerstone in the education of election officials, poll workers, and, most importantly, the voters. We are dedicated to the goals of HAVA and will implement the appropriate programs in order to bring Tennessee into full compliance with HAVA.

**(4) *How the State will adopt voting system guidelines and processes which are consistent with the requirements of Section 301.***

Tennessee currently requires the Secretary of State's Elections Division to certify all voting machines against the voting systems standards (VSS) established by the Federal Election Commission (FEC). This testing is done through a program established by the National Association of State Election Directors (NASSED).

With the implementation of HAVA, the Coordinator of Elections, along with the State Election Commission, will be responsible for certifying all voting systems in the State of Tennessee. In order for a voting system to be certified, the voting system must permit voters to verify in private whom they voted for prior to the ballot being cast; permit voters to change or correct the ballot in private prior to the ballot being cast; and notify voters if they have overvoted and allow them to correct the ballot in private prior to the ballot being cast. The voting systems must also produce a permanent paper record with a manual audit capacity and be accessible for individuals with disabilities. Finally, the voting system must comply with the error rates mandated by the FEC and have a definition of what constitutes a vote and what will count as a vote.

The Coordinator of Elections, in conjunction with the Tennessee State Election Commission, will oversee a process of recertification of voting systems to ensure compliance with HAVA. This process will require all voting systems to meet all the above voting systems standards. The Coordinator of Elections will also provide this information to the local counties, and those counties will be required to conform their voting systems to the guidelines.

Once the Federal Election Assistance Commission develops new voting system standards, Tennessee will create new guidelines and processes, if necessary, to comply with those standards.

**(5) *How the State will establish a fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management.***

Tennessee has administratively established the election fund required by HAVA. The fund is set up through the Secretary of State's fiscal office and has received Title I monies. The Secretary of State's office will work with the State Department of Finance and Administration and the State Comptroller to ensure that transactions involving this fund will meet all applicable State and Federal requirements.

- (6) *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.*

Title III requires several monumental changes in Tennessee's electoral process. These changes include the replacement and/or upgrade of over half of the voting systems in the State, the implementation of provisional voting, new requirements in voting information, and a computerized statewide voter registration list.

#### **A. VOTING SYSTEMS**

In order for Tennessee to meet HAVA requirements, all ninety-five counties will need some type of either replacement system or upgrade to their current system. According to the information we have received, Tennessee will receive \$16, 529, 000 from Title III with a State match of \$869, 947. We anticipate receiving \$6,105,000 from Title I, Section 101, and \$2,507,000 from Title I, Section 102. This totals \$26,010,947.

All ninety-five counties will need to acquire a DRE machine for each precinct that will comply not only with the HAVA disability requirement but also the other requirements of Section 301. Therefore, the State of Tennessee will purchase one of the above machines for each precinct in the State. Approximately forty-three (43) counties have either punchcard or lever voting systems. These counties will need to completely replace their current voting system with one that complies with Section 301. This will require the purchase of new machines in seven hundred and seventy-five (775) precincts in the State. Tennessee has decided that it will allot nine thousand (\$9,000) dollars per precinct to meet that goal. The counties will have a choice of either purchasing voting machines that comply with HAVA or converting their system to a precinct base optical scan system that complies with HAVA. If the counties choose to buy machines, the State will purchase those machines for the counties. If a county does not use all nine thousand (\$9,000) dollars per precinct, the money will be deposited in the election fund for use in accordance with Title III.

One hundred and eighty-eight (188) precincts have central base optical scan systems and will need to either convert to precinct base optical scan or purchase new voting machines which comply with HAVA. These precincts will also be allotted nine thousand dollars (\$9,000) per precinct for them to upgrade their system. If the counties choose to buy DRE voting machines, the State will purchase those machines for the counties. If a county does not use all nine thousand (\$9,000) dollars per precinct, the money will be deposited in the election fund for use in accordance with Title III.

## **B. PROVISIONAL VOTING**

A bill establishing a process for provisional voting passed the Tennessee General Assembly during the 2003 session and became effective on July 1, 2003. (See Appendix A).

## **C. COMPUTERIZED STATEWIDE LIST**

The Secretary of State through the Coordinator of Elections will implement a statewide voter registration list that will comply with HAVA. The State of Tennessee has allotted \$5,043,947 to upgrade the current system. The Coordinator of Elections will be responsible for the maintenance of this database and will supply support to the local counties.

## **D. TRAINING AND EDUCATION**

In the process of implementing the above new procedures, Tennessee will be faced with the challenge of educating our election officials, poll workers, and the voters of Tennessee. Tennessee currently provides training for county election officials, who in turn provide training for poll workers. It is our intention to enhance this training at both the State and local levels. Additionally, Tennessee will embark on a voter education project to help the public understand the new requirements of HAVA, as well as other rights and responsibilities associated with the electoral process. This will include public announcements and videos produced at the State level. Tennessee plans on allotting \$1,000,000 to these projects.

## **E. OTHER GOALS**

Tennessee will allot \$500,000 to accessibility issues for individuals with disabilities. Tennessee has also applied for funds under Section 261 of HAVA. In order to make all polling places accessible to individuals with disabilities, Tennessee must determine where the problems exist and how to best solve those problems. Many counties have begun to survey their polling places in order to determine where improvements need to be made. To further this cause, one of the disability coalitions in Tennessee is conducting its own survey to assess each polling place. In addition to this survey, the Coordinator of Elections will gather information from the local county election offices to determine what areas need to be dealt with and the priority of those needs. We realize that many issues are not apparent to the eye of those without disabilities, and therefore we feel that it is essential to allow individuals with disabilities to lead us in this endeavor.

Improvements will include, but not be limited to:

- Parking lot accessibility, i.e. distances and types of surfaces (pavement, gravel, grass)
- Ramp access to the polling location

- Lighting inside the polling location
- Doorways that are accessible to individuals with disabilities
- Bathroom access for individuals with disabilities
- Voting areas and privacy issues while voting.

The Coordinator of Elections will require each county to submit in writing an application for Section 261 funds and the areas that will be addressed if the funds are granted.

As with any new process, there will be unexpected costs; however, it is our goal to meet every requirement set out in HAVA and to bring Tennessee to the forefront of election reform. Any money which is not used for its allotted purpose will be deposited into the election fund and used for another HAVA goal. This section of the plan is based on funding appropriated for the current Federal fiscal year. Tennessee will submit changes, if needed, to the Committee once it is determined how much money will be allotted Tennessee in future years. Tennessee reserves the right to request the stipulated waivers allowed through HAVA.

## PROPOSED HAVA FUNDING

### HAVA Federal Funding

Title I, Section 101 (administration of elections)	\$ 6,105,000
Title I, Section 102 (replacement of punchcard/lever)	\$ 2,507,000
Title III (requirements payments)(State plan)	\$ 16,529,000
Tennessee State Match	\$ 869,947
<b>TOTAL:</b>	<b>\$ 26,010,947</b>

### HAVA Proposed Expenditures

Title III Accessibility for Individuals with Disabilities 2,400 precincts X \$4,500/machine	\$ 10,800,000
Title I, Section 102 (replacement punchcard/lever) 775 precincts X \$9,000 per precinct	\$ 6,975,000
Title III Requirements (Central Base Optical Scan) 188 precincts X \$9,000 per precinct	\$ 1,692,000
Statewide VR database and related costs/mandates	\$ 5,043,947
Education and Training	\$ 1,000,000
Accessibility issues (disabilities)	\$ 500,000
<b>TOTAL</b>	<b>\$ 26,010,947</b>

- (7) *How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payments 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.*

The Secretary of State will work with the Commissioner of Finance and Administration and legislative leaders to ensure that the expenditures of the State for the activities funded by the payments remain at a level not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000. There will be a Maintenance of Effort requirement for each county receiving direct funds from HAVA.

- (8) *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.*

The Secretary of State through the Coordinator of Elections will establish performance goals and measures to evaluate the success in carrying out these goals. In order to establish these performance goals and measures, the Coordinator of Elections will work with the county election commission offices in determining what processes will be the most successful. Counties will be required to gather and maintain needed information and submit that information to the Coordinator of Elections upon request. The counties will also be required to report the progress of the goals and measures implemented through HAVA. The Coordinator of Elections will be responsible for the ultimate success of these goals but will work hand in hand with each county to assure success.

## **PERFORMANCE GOALS**

Tennessee's primary goal is to become fully compliant with HAVA through the successful implementation of the programs addressed in this State Plan. The table below outlines the element to be achieved, the timetable for meeting each element of the plan, and the official responsible for ensuring that the goal is met:

Element	Timetable	Official Responsible
Voting Systems	January 1, 2006	Coordinator of Elections and County Administrators
Provisional Voting	July 1, 2003	Coordinator of Elections
Administrative Complaint Procedure	January 1, 2004	Coordinator of Elections
Voter Education	Ongoing process	Coordinator of Elections and County Administrators
Poll Worker, Poll Official Training	Ongoing process	Coordinator of Elections and County Administrators
Polling Place Accessibility	Ongoing process	County Administrators
Statewide Voter Registration List	January 1, 2004; however, if the State certifies good cause for waiver, then January 1, 2006	Coordinator of Elections

## **PERFORMANCE MEASURES**

The State will use the following criteria to measure its performance goals: voter registration and turnout; functionality of voting equipment, including voter and poll official satisfaction with the new systems; resolution of complaints, including complaints against poll workers and complaints filed under the administrative complaint procedures under section 402; and compliance with disability issues.

**(9) *A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.***

Section 402 requires each State to establish a State-based administrative complaint procedure. This procedure will allow any citizen to file a formal complaint if a violation of Title III has occurred, is occurring, or is about to occur in the near future. This procedure will be limited solely to complaints alleging a violation of Title III, which will include voting systems standards, provisional voting, voting information requirements, computerized voter registration, and requirements for voters who register by mail.

Prior to the implementation of this procedure, Tennessee used an informal mechanism for dealing with certain types of complaints. Complaints were handled at the appropriate level. For example, if a complaint came in at the county level, it was handled by that county's administrator. If the administrator could not resolve the issue, the State Coordinator of Elections was notified and would ultimately decide the issue. If needed, the Coordinator has the power under Tennessee Code Annotated Section 2-11-202(a) (5) to investigate or have investigated by local authorities the administration of the election laws and any reports of violations.

With the passing of HAVA, Tennessee will now handle all complaints involving Title III in the following manner. These procedures shall be uniform and nondiscriminatory.

1. When an allegation first comes to the attention of either a county election office or the Coordinator of Elections, a determination will be made as to whether the alleged violation falls under Title III. If it is determined that the violation falls under Title III, then the complainant may file a formal complaint. If the complainant elects to file a formal complaint, then the following procedures will be followed. The formal complaint may be a past, present, or future violation under Title III.
2. The formal complaint must be filed either directly with the Coordinator of Elections or, if filed through the county elections office, it must be directly forwarded to the Coordinator of Elections. The Coordinator of Elections has promulgated a form for such formal complaints that must be used in the filing of such complaints. The form will be available at the county election office, the Coordinator of Elections office, and online through the State's website.
3. The formal complaint must be in writing and notarized, and the formal complaint must be signed and sworn to by the complainant. If the form is sent via online, the complainant shall also send the original notarized form. The form will not be officially received until the signed and notarized form is received by the appropriate official.
4. At the request of the complainant, there shall be a hearing on the record. The Coordinator of Elections or designee shall hold the hearing. This hearing may be in person or by telephone conference call. The Coordinator of Elections may also request the parties to submit written responses to the complaint.

5. Once the Coordinator of Elections receives the formal complaint, the Coordinator of Elections or designee will decide the resolution of the complaint.
6. If, after the hearing, it is determined that a violation has occurred, the State, through the Coordinator of Elections or designee, shall provide an appropriate remedy in accordance with Title III.
7. If, under the procedures, the State determines that there is no violation, the State shall dismiss the complaint and publish the results of the procedures.
8. The Coordinator or designee shall make a final determination prior to the expiration of the 90-day period which begins on the date the complaint is filed; if filed online, the 90-day period begins on the date that the notarized, signed copy is received by the Coordinator of Elections. If it appears that this process will take more than the 90-day deadline, only the complainant may agree to a longer period of time for making such a determination.
9. If the complainant does not agree to an extension and the 90-day period expires, the complaint shall be resolved within 60 days under alternative dispute resolution. All previous proceedings, including the record and any correspondence, shall be forwarded to an administrative law judge assigned by the Secretary of State's office for alternative dispute resolution.
10. The State may consolidate formal complaints filed under these procedures.

- (10) *If the State received any payment under Title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.***

The proposed expenditures of funds detailed in this State Plan account for Title I funds received to date, expected additional Title I funds, and projected Title III funds.

- (11) *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).***

The Coordinator of Elections will be responsible for the ongoing management of the State Plan. The State Advisory Panel will meet at least once a year to review and update the State Plan. The Coordinator of Elections may also convene the State Advisory Panel at other times during the year as deemed necessary. If material changes need to be made to the plan, those changes will be done in accordance with the requirements of HAVA.

- (12) *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.***

This Plan is Tennessee's first State Plan submitted to the EAC. This section will be updated in the next fiscal year, 2004, and will reflect any changes to the Plan, as well as a summary of the 2003 successes.

- (13) *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 and section 256.***

Tennessee's advisory committee consisted of fifteen members comprised in accordance with the HAVA guidelines. Members include the Secretary of State; the Coordinator of Elections; several local administrators of elections, including officials from the two most populous jurisdictions; advocates for persons with disabilities; and other citizens representing groups of interest.

In order to complete the State Plan, the advisory committee met on four occasions: May 5, 2003; May 12, 2003; May 19, 2003; and June 4, 2003. Each meeting was open to the public in the State's Legislative Plaza. Notice for all meetings was done

in conformity with the Tennessee Open Meetings Act and was posted on the Elections Division website.

The State Plan was made available for public inspection and comment from June 16, 2003 to July 15, 2003, in accordance with section 256. Notice of the time for public inspection and comment was published in the Tennessee Administrative Register, on the Elections Division website, and through a press release to the Capitol Hill Press Corps. Comments were directed to the Coordinator of Elections' office. Copies of the plan were also available through the Coordinator of Elections' office and could be requested by mail, e-mail or facsimile. A copy of the plan was available at the ninety-five county election commission offices. Public comments were taken into consideration in the final draft of the plan.

## HAVA ADVISORY COMMITTEE MEMBERS

COMMITTEE MEMBER	TITLE AND ORGANIZATION
Roland Colson	Chief of Technology IS/Dept. of Safety
Riley C. Darnell	Secretary of State State Capitol
Carol Francisco	President, Middle TN Council of the Blind
Steve Griffy	Assistant Director of Information Systems
Lynn Harris	Administrator of Elections Wilson County
Jane Heathcott	Administrator of Elections Dyer County
Darren Jernigan	Director of Government Affairs Permobil Inc.
James Johnson	Administrator of Elections Shelby County
Janet Kleinfelter	Assistant Attorney General
Vicki Koelman	Administrator of Elections Montgomery County
Michael McDonald	Administrator of Elections Davidson County
Judy Poulson	Treasurer, League of Women Voters
David Seivers	TN County Services Association
Brook Thompson	Coordinator of Elections
Carol Westlake	Tennessee Disability Coalition

# **APPENDIX A**

**CHAPTER NO. 352**

**HOUSE BILL NO. 1806**

**By Representatives Rinks, Coleman, Henri Brooks, Larry Turner**

**Substituted for: Senate Bill No. 1782**

**By Senator Haynes**

AN ACT to amend Tennessee Code Annotated, Title 2, Chapter 5; Title 2, Chapter 6 and Title 2, Chapter 7, relative to elections.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 27-112(a), is amended by deleting subdivision (3) in its entirety and substituting instead the following language:

(3)

(A) A person shall be entitled to vote a provisional ballot under the procedures of this section if the voter claims to be properly registered in the county and eligible to vote at the precinct in the election, but whose eligibility cannot be determined by the computer signature list or by examination of the permanent registration records on file with the county election commission.

(i) If the election official cannot determine that the voter's name should have been placed on the precinct's computer signature list, then the voter shall complete an original voter registration application. At the time of registration and pursuant to section 3 of this act, the voter shall present verification of the residential address under which the person desires to vote.

(ii) After the voter has completed the voter registration application and supplied verification of his or her residential address, the voter shall complete an application for ballot pursuant to this section.

(iii) Upon completion of the application for ballot, the voter shall be given a provisional ballot and provisional ballot envelope. The provisional ballot envelope shall be of a different color from absentee ballot envelopes and shall bear a detachable slip that contains the provisional ballot affidavit. The provisional ballot affidavit shall contain the voter's printed name, social security number, date of birth, signature and any other identifying information deemed necessary by the coordinator of elections to satisfy the requirements of this section and to prevent fraudulent registration and voting.

(iv) Both the voter registration application and the application for ballot shall be deposited in the provisional ballot box. Nothing in this section shall be construed to allow election day voter registration.

(v) Pursuant to § 2-7-114(b) and (c), the voter shall vote the provisional ballot. Any county utilizing punchcard or optiscan technology shall process their ballots pursuant to rules promulgated by the state coordinator of elections. The provisions of § 27-116 shall govern any voter needing assistance.

(vi) Along with the voter registration applications and the applications for ballot completed by provisional voters, all provisional ballots that have been cast shall remain sealed and locked in the absentee ballot box for return to the county election commission at the close of polls.

(B)

(i) All provisional ballots shall be counted at the county election commission office by a separate central absentee ballot counting board that has been appointed in like manner to the central absentee ballot counting board established under § 26-302 and known as the central provisional ballot counting board. Upon completion of the counting of the absentee ballots, the county election commission may designate the central absentee ballot counting board established under § 2-6-302 as the central provisional ballot counting board. If the county election commission determines that there are fewer than one hundred (100) absentee and provisional ballots to be counted, the county election commission may act as the central provisional ballot counting board without additional compensation. When provisional ballots have been cast utilizing punchcard or optiscan technology, the counting of the provisional ballots shall be pursuant to rules promulgated by the state coordinator of elections.

(ii) After the delivery of the absentee ballot boxes containing provisional ballots to the county election commission, the central provisional ballot counting board shall unlock and open each absentee ballot box from the polling places in the presence of a majority of the judges.

(iii) The central provisional ballot counting board shall examine the records of the county election commission and the records of the Tennessee departments of health, human services, mental health and retardation, safety and veterans affairs with respect to all provisional ballots. The central provisional ballot counting board shall then determine if the person voting that ballot was entitled to vote and met the statutory requirements for registration at the precinct where the person cast a vote in the election. The central provisional ballot counting board shall also determine that the person has not already cast a ballot in the election.

(iv) If the central provisional ballot counting board determines that the person should have been registered to vote and met the statutory requirements for registration in the precinct where the voter cast the ballot and the voter has not cast a ballot in the election in a different precinct, then the central provisional ballot counting board shall remove the provision ballot affidavit from the provisional ballot envelope and place the sealed ballot with all other provisional ballots that have been determined to be countable.

(v) If the central provisional ballot counting board determines that the person should not have been registered to vote in the precinct where the voter cast the ballot or that the voter has previously cast a ballot in the election in a

different precinct, the provisional ballot envelope shall not be opened nor its provisional ballot affidavit removed, but it shall be marked "Rejected" across its face with the reason for rejection written on it and signed by at least two (2) members of the central provisional ballot counting board. It shall then be placed in the container of rejected absentee ballots. A list shall be made of such rejected ballots, and the administrator shall notify the voters by mail of the rejection and the reason for such rejection.

(C)

(i) The counting of all provisional ballots must be completed within forty-eight (48) hours of the close of polls on election day. If the county election commission determines that the counting of provisional ballots cannot be completed by the designated time, the state coordinator of elections may grant the county an extension of time and designate a time that shall be no later than the second Monday after the election.

(ii) If the county election commission determines that the counting of provisional ballots cannot be completed during the night of election day and upon the close of each counting session, the absentee ballot boxes containing the provisional ballots must be locked and sealed in the same manner established in § 26-311. The ballot boxes may not be unlocked except when the central provisional ballot counting board is performing its duties in compliance with this section.

SECTION 2. Tennessee Code Annotated, Section 2-7-112(c), is amended by deleting the subsection in its entirety and substituting instead the following language:

(c) For purposes of comparing the person's signature on the application for ballot, "evidence of identification" shall be a valid voter's registration certificate, Tennessee driver license, social security card, credit card bearing the applicant's signature or other document bearing the applicant's signature.

SECTION 3. Tennessee Code Annotated, Section 2-7-112, is amended by adding the following as a new, appropriately designated subsection:

(d) For purposes of registering a person to vote pursuant to subsection (a)(3), "verification of residential address" shall include, but is not limited to, a Tennessee driver license, a residential lease agreement, a utility bill or other document bearing the applicant's residential address. Such verification may be on the same or different document from those listed herein in subsection (c).

SECTION 4. Tennessee Code Annotated, Section 2-7-114(c), is amended by designating the existing language as subdivision (1) and by adding the following language as subdivision (2):

(2) If the voter is voting pursuant to § 2-7-112(a)(3), the voter shall state the voter's name and present the folded ballot to the judge assigned to receive and deposit the provisional ballots. The judge shall compare the provisional ballot number on the stub with the provisional ballot number on the voter's ballot application. The judge shall file all ballot applications in the order in which they are received. If the provisional ballot numbers are the same, the judge shall tear off and destroy the provisional ballot stub and deposit the provisional ballot in the provisional ballot envelope which contains the provisional ballot affidavit. The judge shall assure that the provisional ballot affidavit has been completed and signed by the voter. The provisional ballot, in its envelope, shall be deposited in an absentee ballot box that

satisfies the requirements of the absentee ballot boxes and has been locked pursuant to § 2-6-311.

SECTION 5. Tennessee Code Annotated, Section 2-7-124(a), is amended by adding after the words "in Tennessee" the following language:

and did not vote a provisional ballot

SECTION 6. Tennessee Code Annotated, Section 2-7-131, is amended by adding the following as a new, appropriately numbered subsection:

(f)

(1) Notwithstanding the provisions of subsections (a) through (d), the county election commission may instruct the officer of elections and a judge of a different political party to transport the locked ballot box or boxes containing voted paper ballots to the county election commission office to have such paper ballots counted by the central absentee ballot counting board pursuant to § 2-6-302. The central absentee ballot counting board of this subsection may be the same members as a counting board that has already been appointed in like manner to the absentee ballot counting board established under § 2-6-302 or it may contain different members that have been appointed in like manner to such a board. The county election commission may only exercise this option if the ballot box or boxes used in the polling place satisfy the requirements of the absentee ballot boxes and have been locked pursuant to § 2-6-311.

(2) Where the write-in feature of a direct recording electronic voting machine has been used, the county election commission may instruct the officer of elections and a judge of a different political party to transport the locked ballot box or boxes containing the voting machine printer tape containing the write-in names to the county election commission office to have such paper ballots counted by the central absentee ballot counting board pursuant to § 2-6-302. The central absentee ballot counting board of this subsection may be the same members as a counting board that has already been appointed in like manner to the absentee ballot counting board established under § 2-6-302 or it may contain different members that have been appointed in like manner to such a board.

SECTION 7. Tennessee Code Annotated, Section 2-6-302(b), is amended by adding between the words "absentee" and "ballots" the words "and provisional".

SECTION 8. This act shall take effect July 1, 2003, the public welfare requiring it.

PASSED: May 27, 2003



JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES



JOHN S. WILDER  
SPEAKER OF THE SENATE

APPROVED this 13<sup>th</sup> day of June 2003



PHIL BREDESEEN, GOVERNOR