



Federal Register

**Monday,
January 24, 2005**

Part III

Election Assistance Commission

**Publication of State Plan Pursuant to the
Help America Vote Act; Notice**

ELECTION ASSISTANCE COMMISSION**Publication of State Plan Pursuant to the Help America Vote Act**

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107-252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** material changes to the HAVA State plan previously submitted by Puerto Rico.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202-566-3100 or 1-866-747-1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to Mr. Aurelio Gracia Morales, President, Puerto Rico Elections Commission, P.O.

Box 195552, San Juan, Puerto Rico 00919-5552, phone: 787-777-8678, Fax: 787-777-8680.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the 50 States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates.

The submission from Puerto Rico addresses material changes to the original State plan, among which are changes in the use of the HAVA requirements payments expected, but not yet received, by the State. In accordance with HAVA section 254(a)(12), the document also provides information on how the State succeeded in carrying out the previous State plan.

Upon the expiration of 30 days from January 24, 2005, Puerto Rico will be eligible to implement any material changes addressed in the State plan published herein, in accordance with HAVA section 254(a)(11)(C). At that time, Puerto Rico also will be eligible to receive its 2003 and 2004 requirements payments, for which the State recently filed a certification under HAVA section 253.

EAC notes that the plan published herein has already met the notice and comment requirements of HAVA section 256, as required by HAVA section 254(a)(11)(B). EAC wishes to acknowledge the effort that went into revising the State plan and encourages further public comment, in writing, to the chief election official of Puerto Rico.

Thank you for your interest in improving the voting process in America.

Dated: January 13, 2005.

Gracia Hillman,

Chair, U.S. Election Assistance Commission.

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COMISION ESTATAL DE ELECCIONES
ESTADO LIBRE ASOCIADO DE PUERTO RICO

AURELIO GRACIA MORALES
Presidente

December 20, 2004

DeForest B. Soaries, Jr., Chairman,
Election Assistance Commission
1225 New York Avenue, NW, Suite 1100
Washington, DC 20005

Dear Chairman Soaries:

Re: Transmittal of State Plan Revisions for 2004

As required by the Help America Vote Act of 2002 (HAVA), The Puerto Rico Elections Commission (CEE) hereby transmits it 2004 State Plan Revisions.

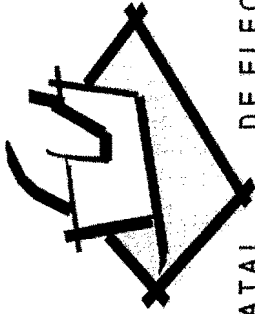
Based on our understanding of the EAC's preference, we have drafted this as a change document, rather than as a new, full State Plan, in order to save some of the costs of publication. We will also transmit these 2004 State Plan Revisions as an electronic file.

There were no comments submitted during the public comment period on our draft revisions.

Please direct any questions to Néstor J. Colón Berlingerí, First Vice President of the CEE. He can be reached at 787-777-8677 or 787-380-1459. The CEE address is PO Box 195552, San Juan, PR 00919-5552.

Sincerely,

Aurelio Gracia Morales,
President,
Puerto Rico Elections Commission



COMISION ESTATAL DE ELECCIONES
ESTADO LIBRE ASOCIADO DE PUERTO RICO

Help America Vote Act of 2002

2004 Revisions to the 2003 Implementation Plan & 2005-2006 Planned Activities

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December 2004

Dear Puerto Rico Voters:

The Comisión Estatal Electoral de Puerto Rico (Comisión) issued an initial plan for implementation on August 14, 2003 (2003 Implementation Plan) as required under the Help America Vote Act of 2002 (HAVA).

This is the 2004 revisions to that initial plan (2004 Revisions), as required by HAVA, and was available for thirty days to solicit public review and commentary beginning in October after the Comisión disseminated copies of the plan for public comment and review, and released notice of the revisions to the press and posted the revisions on the Government of Puerto Rico’s website.

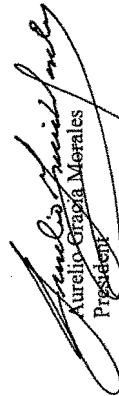
Most of the changes in the 2004 Revisions are changes in the amounts being spent for different improvements to elections, and updates on elections improvements contemplated, but not yet enacted at the time of the 2003 Implementation Plan. As actual costs were spent, in many cases the Comisión found that its estimates were higher than actual costs turned out to be. In addition, due to a cap on the federal appropriations, Puerto Rico’s share of the federal funds was artificially limited significantly below the originally authorized figures, resulting in some downward revisions to what could be spent. Moreover, the Comisión exceeded its originally ambitious plans for a number of improvements of accessibility for disabled voters. The 2004 Revisions review the improvements for disabled voters that the Comisión implemented, including posters in sign language for the deaf, and Braille instructions for the blind, as well as removal of physical barriers to “fácil acceso” colegios.

The Comisión appreciates the time and suggestions given by the members of the Puerto Rico HAVA Advisory Committee. This diverse group represents the diverse constituencies that are a part of Puerto Rico’s electorate.

We are fortunate that our farsighted government officials, elected, appointed, and hardworking staff, have already put in place many of the requirements of HAVA prior to HAVA’s enactment. As a result, Puerto Rico has proven to be far ahead many states of the American Union in meeting the requirements under HAVA.

Yet, there are still improvements to be made. The 2004 Revisions set out the plan the Comisión follow to continue working assiduously to improve and make elections accessible to each voter in Puerto Rico.

Sincerely,



Aurelio Graña Merales
President

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Background on Elections in Puerto Rico

Puerto Rico is in a unique situation. According to the 2000 census, Puerto Rico's voting age population is 3.8 million, a population larger than in 25 states. Moreover, Puerto Rico's turnout for elections is significantly higher than virtually all of the 50 states. Turnout for the 2000 elections was 82.3%, or over 2.4 million voters, and generally always tops 80% for general elections. Even for their lowest island wide election in the past twenty years, a special referendum in 1991, Puerto Rico had over a 60% turnout.

Yet, after establishing authorized amounts in the Help America Vote Act (HAVA), an artificially set cap that was specific only to Puerto Rico was imposed in the federal budget. Puerto Rico will receive just \$ 2,319,361 in Title II federal funds! This means Puerto Rico will receive only approximately 6% of the estimated amount needed to minimally meet the federally mandated requirements!

According to a calculation by the Congressional Research Service using the formula based on voting age population established in HAVA, Puerto Rico was authorized to receive approximately \$37,362, 313 in Title II funds under the Help America Vote Act (HAVA)! While there has been some reduction between the originally authorized funds and those received by the states, the two states nearest in size, Oklahoma and South Carolina, have received over \$27.5 million and \$32.4 million, respectively. The smallest 12 states and the District of Columbia, which range in size from approximately a half million voters to approximately 1.3 million voters are all receiving a guaranteed minimum that so far is over \$11.5 million dollars. These jurisdictions will get five times the money, with, at best, half the population.

Puerto Rico is receiving less than \$1 per voter. By comparison, DC, which also has non-voting representation in Congress will receive approximately \$20.5 per voter, and the other territories are receiving something over \$14 per voter! In fact, the smallest state will receive approximately \$23 per voter to help pay for the HAVA mandates. The largest state is still to receive approximately \$7.5 per voter.

The challenge for Puerto Rico, then, is to meet the mandatory requirements without even receiving a fraction of the congressionally estimated amount needed to make the mandatory changes. The options available are accordingly severely restricted. The loser will be the voters, particularly the disabled voters, of Puerto Rico, as the only significant cost item needed in Puerto Rico is a voting system that will allow the disabled to vote privately and independently. With electronic voting machines serving approximately 750 voters in a day, and over 2.4 million voters in Puerto Rico, and an average cost in excess of \$5000 per voting machine, Puerto Rico is being expected to spend almost \$16 million, just on voting equipment, while being reimbursed less than \$2.5 million!!!

CHANGES TO STATE PLAN:

SECTION I - §301 Voting Systems Standards

While the deadline set by HAVA for meeting voting system requirements is 2006, Puerto Rico will not be conducting a federal election in that year (the term for Puerto Rico's Resident Commissioner to the US Congress is for four years), which effectively means that Puerto Rico will first be using a compliant system in place in 2008. With all the other changes, both due to HAVA and to other changes in Puerto Rico, and with the funding challenge, Puerto Rico decided to tackle this HAVA requirement after the November 2004 elections.

In addition to funding constraints, Puerto Rico has some political challenges to changing the voting system. Currently, the island's political consensus is to preserve the paper ballot system. The Commission must, therefore, either make sure their uniform, paper ballot system that affords voters with disabilities the right to vote privately and independently, or get political agreement to change.

For the 2004 election, consistent with HAVA §301(a)(1), the Commission has revised its instructions to voters. Instructions included specific instructions directing voters to review their ballot choices, as well as instructions about the effect of voting for more than one candidate.

Also, as has been true for many years, the Commission provided tactile ballot sleeves for blind voters to vote independently and unassisted, if they choose. New in 2004 was Braille instructional voting material for blind voters. The training and education department makes special presentations for disabled voters over the fall, so they can be prepared for their special voting needs. Also new this year, the Commission initiated absentee voting in hospitals and for those who are bedridden at home.

In addition to revising current instructions, the Commission conducted a special multi-media education outreach on the voting process. In 2004 all voter information advertisements included closed captioning, except for the ad done in which closed captioning was the focus of the ad and voiceover was provided for the blind.

§302 Provisional Voting

Puerto Rico currently administers both a provisional ballot process and a challenge ballot process to protect the rights of eligible voters. The Puerto Rico procedure needed to be amended to ensure that every voter meeting the circumstances defined in HAVA Section 302 is issued a ballot.

As described in the 2003 HAVA State Plan, Puerto Rico uses a process for administering provisional ballots (called in Puerto Rico "añadidos a mano," or "adding names to the list by hand"), to handle voters who show up in a polling place but whose names are not on the voter registration list. Changes were needed to this process to comply with HAVA in the limited circumstances that the voter (1) is not a registered voter in Puerto Rico or (2) does not have their voter identification card. (If a registered voter votes a provisional ballot, but is not in his own proper polling place, the provisional ballot is counted to the extent the voter is eligible to vote the ballot.) In addition, the challenge ballot process has been amended to ensure the protections given to the voters who cast ballots in the special college, such as the protection of secrecy, are given to challenged voters.

Following the election, all voters who cast provisional ballots in this special college can access information on the disposition of the ballot by means of a toll-free automated phone system, online through the Commission's website, or by contacting the local Commission office. Additionally, the Commission will be mailing notification to all such voters.

§302 Voting Information Requirements

The Commission has reviewed and revised all materials, as needed, prior to the 2004 General election to ensure that it is compliant with HAVA.

§303 Computerized Statewide Voter Registration List Requirements and Requirements for Voters Who Register by Mail

Puerto Rico's Current Voter Registration System

Puerto Rico is already substantially in compliance with the §303 requirement for a centralized, statewide computerized voter registration list. In addition, Puerto Rico applied for the waiver for compliance of their voter registration system. Furthermore, the list maintenance requirements in sections 303(a)(2) and 303(a)(4) do not apply to Puerto Rico, which was exempted from the requirements of the National Voter Registration Act. The anticipated changes are in process, and are anticipated to be in place during 2005.

Planned Activities for Achieving Compliance with Title III and Election Administration Improvements

Activities to meet the requirements of title III (§252 funds)

Pilot project for new voting system

The Commission was unable to do a pilot project for the November 2004 elections; the Commission, however, is still planning to conduct one or more pilot programs during special elections to test the use of voting systems that meet the requirements of §301. The projects will test the use either of optical scan ballots and in-precinct counters or touch-screen voting systems. These projects will include training voters, producing materials, equipment rental, licenses, technical support and an evaluation of the results. The projects would be carried out

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across an entire precinct at least. (Estimated total cost of all pilot projects, of which several are contemplated, should not exceed: \$1 million)

Verification of Data Assignments ("Mapification")

Estimated costs for this project have been reduced by \$200,000. Total estimated cost now is: \$1 million.

Mobile Units for Voter Registration

Due to costs, only three mobile units could be added this year, and one unit renovated, for a total of \$ 112,000. The Commission still intends within the next two years to purchase four additional units for an additional \$138,000. Total estimated cost is \$ 245,000.

Projects to improve election administration (§101 funds)

Transferring paper files to microfilm

Estimated costs for this project have been reduced by \$200,000. Total estimated cost now is: \$ 200,000.

Mechanized distribution controls

Estimated costs for this project have been reduced by \$15,000. Total estimated cost now is: \$105,000.

Equipment upgrade for local election offices

Estimated costs for this project have been reduced by \$100,000. Total estimated cost now is: \$ 200,000.

HAVA administration and planning

The Commission intends to use some \$251 funding for education and training of Commission officials in the requirements of HAVA. In addition, the Commission will invest in a planning process to facilitate effective implementation of the new law in a way that both complies with the law and is appropriate to Puerto Rico. (Estimated cost: \$565,000)

Planned Activities to Improve Accessibility (§261 funds)

Puerto Rico has a long history of working to make the electoral process accessible to voters with disabilities, including ballot templates for the blind and other efforts at accessibility that even pre-date the passage of the Americans with Disabilities Act. These efforts are ongoing and improving. HAVA provided two different funding streams for addressing these problems; the requirements payments under §257, and the Department of Health and Human Services (HHS) grants under §261 of HAVA. Puerto Rico received \$151,345 in 2003 from HHS, and in 2004 received an additional \$104,364 under this grant.

The Commission has undertaken several initiatives to make polling stations – and the voting process as a whole – more accessible, and, as importantly, has continued regular meetings of the HAVA committee, which includes significant participation by the disabled advocates and

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representatives, to advise the Commission on its continued activities in this area. While the HHS grants were for a number of discrete projects, generally, the Commissions efforts have focused on three key areas, described below.

Eliminating barriers to polling stations

The Commission used some of the funding to conduct an extensive survey of all existing and alternative polling stations to determine what barriers still existed and how barriers might be eliminated. The Commission is targeting an additional portion of the funding to building ramps, purchasing temporary ramps, and making other improvements to remove physical barriers, and to make any temporary polling places accessible. For the November 2004 elections, the Commission's goal was to make accessible in each polling place at least the "fácil acceso colegio" (that is, the room in each polling place to which disabled voters are assigned), either by permanent or temporary fixes to the polling places.

Training and accessibility manuals for Election Officials and Pollworkers

The Commission believes better education and training of local election officials and polling place workers is an important component in eliminating barriers. The Commission used a portion of the funds to produce special training and manuals for local election officials and polling place workers on accessibility, and how to accommodate the needs of all voters with disabilities. The materials produced were done with active involvement of members of the disability community.

Opening up the voting process, and voter education

In addition to purchasing aids for voters with disabilities for Election Day, such as magnifiers, the Commission made a number of other improvements. For example, the Commission put new computer equipment into its library for disabled voters, including a Braille printer and special software that translates information into Braille and audio, along with audio headphones and keyboards in order to allow disabled voters to have access to the same information as non-disabled voters. The Commission also has acquired four mobile units to bring the Commission to voters for whom getting to the local offices is difficult. The Commission has improved its Braille ballot templates for Election Day, and has added Braille instructions material for blind voters. There are new posters for Election Day, including one for deaf voters that describes the voting process visually, and using sign language. And all television advertisement includes sign language as a secondary medium within the screen, with one exception: that advertisement uses sign language as the primary method of communication and voiceover as the secondary method of communication in the advertisement! In addition, the Commission has developed a voice-activated telephone system, which will include TTY, and has improved its website, to make it easier for all voters to access election information in general, as well as specific voter information.

SECTION 6 – Budget for Title III Requirements

Funding Assumptions

HAVA Title I (101) Funds: \$3,151,144 (all in FY 2003)

HAVA Title II (252) Funds: \$830,000 (in FY 2003)
\$1,489,361 (in FY 2004)

HAVA Title II (261) Funds: \$151,345 (in FY 2003)
\$104,364 (in FY 2004)

Puerto Rico Matching Funds: \$43,658 (in FY 2003)
\$78,340 (in FY 2004)

No assumptions are made for FY 2005 funding, as the current status is so unclear.

As indicated in the chart below, the Commission will use all funds appropriated under \$252 to carry out activities to come into compliance with the requirements of §301, §302, and §303.

Please note that the following charts, taken together show spending based on expected receipts.

Estimated Expenditures on Title III Requirements (FY2003 - FY2005)				
	HAVA 101	HAVA 252	HAVA 261	5% match other costs
Sec. 301 - Voting System Requirements				
Pilot projects and purchases related to HAVA compliant voting system		\$1,000,000		
Voting aids and commodities for voters with disabilities			\$ 80,000	
Sec. 302 - Provisional Voting and Voter Information				
Voice activated information and other available and/or posted voter information		\$90,000	\$87,709	
Sec. 303 - Computerized voter registration and verification requirements				
Upgrade of identification system				\$3,000,000*
Reengineering of the voter registration system				\$750,000*
Verification of data assignments		\$1,000,000		
Conversion of postal addresses		\$125,000		
Computers for mobile units		\$90,000		
HAVA administration				
Implementation planning, training & execution, and oversight and management	\$ 565,000			
Subtotal for Title III	\$565,000	\$2,305,000	\$167,709	\$121,998

Some figures are rounded.

*This expenditure is noted for information purposes only.

Expenditures for Improving Election Administration (FY 03 - FY 05)				
	HAVA 101	HAVA 252	HAVA 261	5% match Other costs
Voter Education and Training				
Outreach to voters with disabilities			\$33,000	
Improving Accessibility				
Accessibility study and manual & improvements to polling places		\$25,000		
Voter Registration				
Mobile units for voter registration	\$70,000		\$30,000	
Election Administration				
Transfer of files to microfilm	\$200,000			
Mechanized controls for election materials	\$105,000			
Upgrade and multi-functional equipment for J/P's	\$200,000			
Subtotal this chart	\$575,000		\$88,000	
Subtotals from previous chart on Title III	\$565,000	\$2,305,000	\$167,709	\$121,998
Remaining Funds expected to be spent in 2006 or later	\$2,011,144	\$ 14,361	\$ 0	\$ 0
Total	\$3,151,144	\$2,319,361	\$255,709	\$121,998

** In order to comply with HAVA, Puerto Rico, uniquely, is being expected to come up with substantial additional funding not being required by any other state or territory to meet the same requirements. CEE has not yet determined how to meet requirements and costs, given the circumstances.

SECTION 9 – Grievance Process

In October 2004, the Commission amended its Election Law Complaint Procedure in order to make it comply with §402 HAVA regulations. The *“Reglamento para la Tramitación de Querrelas sobre Infracciones al Ordenamiento Electoral”* (CEE Administrative Grievance Procedure or Revised Grievance Procedure) contains a uniform and nondiscriminatory administrative procedure to resolve complaints filed alleging violations to the Election Law of Puerto Rico, and now, also, to violations of Title III of the Help America Vote Act of 2002 (HAVA).

The amendments to the CEE Administrative Grievance Procedure ensure compliance with HAVA §402(a)(2). Particularly, Chapter IV of the Revised Grievance Procedure includes a section in which the complainant has the right to be heard on the record if he/she wishes to do so. (While this had been the general practice in the past, it was not formally specified.)

Under the CEE Administrative Grievance Procedure, the period of time established for the CEE to make a final determination with respect to a complaint more than meets the criteria established by §402. Under the Revised Grievance Procedure, when a complaint is filed with the Commission's Secretariat it will be assigned a file number and then presented to the designated Evaluation Committee (Committee) within twenty four (24) hours. The Committee shall meet within the following seventy-two (72) hours to initiate the evaluation process and must recommend disposition of the complaint to the Commission within a maximum of thirty (30) days from the date the complaint is assigned to the Committee. Then the Commission must formally resolve any recommended dispositions within fifteen days (15).

If the complaint is filed close to Election Day, the time frames are tightened. If, for example, the complaint is filed thirty (30) days prior any election event, the resolution should not exceed five (5) days. And timeframes shorten until on Election Day a complaint must be resolved within one (1) hour.

There is a separate procedure that has always been available in Puerto Rico to complain about voter registration violations of election law, and this procedure was discussed in the 2003 Puerto Rico State Plan. This procedure is not, however, actually applicable to HAVA Title III complaints, all of which would be referred to the CEE Administrative Grievance Procedure.

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SECTION 12 – Changes from Previous Year's Plan

Only changes are described in this “State Plan” revision document for 2004, as suggested by the Election Assistance Commission, in order to save federal funds needed to print “State Plans” in the Federal Register, therefore they are not repeated in this section. Most changes are funding related, or describe accessibility revisions.

SECTION 13 – Changes to HAVA Committee

Puerto Rico's HAVA Advisory Committee is a diverse group of citizens including members of the Commission, representatives from the three political parties, disabled representation, student groups, and representation of various constituency groups. The First Vice President of the Commission chaired the committee. As required by HAVA, the Committee included representatives from the Commission's local offices serving the two largest jurisdictions in Puerto Rico: San Juan and Toa Baja. In addition, the Committee included a representative from the Office of the Ombudsman for Persons with Disabilities.

The committee has met regularly since last year, focusing on the accessibility requirements.

The only significant changes in membership of the HAVA Committee are the change in titles of the first and second vice presidents of the Commission, and the change in the third vice president. Corrections are shown below. All other members from 2003 are the same.

The corrected changes in Committee membership, including each person's affiliation, are as follows:

- Néstor J. Colón Berlingeri, First Vice President, Election Commission of PR (EC)
- Juan M. Toledo Díaz, Second Vice President, EC
- Manuel Díaz Rodríguez, Third Vice President, EC

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