



The Voice of the Library Community

New York Library Association

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ADVISORY OPINION

Updated Information on the Help American Vote Act (HAVA) for 2016

Background

The Help America Vote Act (HAVA), signed into federal law in 2002, required states to transition to more accessible balloting, namely, optical voting machines, by 2006. New York State passed the Election Reform and Modernization Act (ERMA) in 2005, and subsequently passed an extension for local compliance with HAVA and ERMA in 2007, which allowed continued use of lever voting machines. A further extension for school districts, villages and special districts was passed in 2010. Several subsequent extensions of this exemption were enacted, the last of which was signed into law by Governor Cuomo in 2014 and provided a final sunset of this exemption for December 31, 2015.

This final extension also directed the state Board of Elections to conduct a report on the administration of elections by school districts, villages, and special districts. The report, issued in February 2015, includes recommendations and guidance to localities on how to successfully transition to electronic voting systems.

NYLA offers this update to affected libraries with these considerations in mind. NYLA encourages libraries impacted by this information to consult their retained attorneys with questions that might arise when acquiring access to optical scan voting machines, including cost disputes with county Boards of Election or school districts; ballot access and formulation; and any additional election-related issues.

Immediate Impact

Libraries which continued to enjoy an exemption from the requirements of HAVA and ERMA must now come into compliance with the provisions of these acts beginning on January 1, 2016. Libraries which previously used lever voting machines in the conduct of elections must now move to optical scan balloting, or, in the alternative, use paper balloting methods compliant with existing law.

Unless an affected library decides to use paper balloting, in order to comply with the new requirements you must contract with your local county Board of Election to obtain use of their optical scan machines (if your votes are conducted on a school district ballot, your school district is subject to the same requirements). If you choose to directly contract with the county Board of Elections, this agreement is easily executed through a Memorandum of Understanding.

Unless you choose to use paper balloting, there will be an increased cost in conducting your elections. However, it should be noted that under the U.S. Code of Federal Regulations, county Boards of Election may not realize a profit for making available any compliant voting machine that was purchased with HAVA funds, but may charge for actual costs accrued; e.g., transportation costs and any associated costs such as creating or printing compliant ballots. Further, if a library uses optical scanning technology, poll workers must be trained in the use of

this technology. If a library chooses not to use existing, certified poll workers (lists are available through county Boards of Election), they may send poll workers to the county boards for training and be charged for the costs incurred for training.

Of note is that under current law, county Boards of Election are not required to make their optical scan voting machines available to school districts or libraries for conduct of their elections. However, BOE's 2015 report notes that every county that has been asked to make them available has done so, and the report recommends legislative action to address this oversight in the law.

Conclusion

Any library in New York State which has not previously transitioned to conducting their elections through optical scan voting technology must do so for any election held after January 1, 2016, or use paper balloting that is compliant with statutory requirements. Due to the cost-prohibitive nature of purchasing and maintaining this technology, we recommend coming to an independent agreement with your local county Board of Elections where necessary, or working with your local school district where applicable. Should you have any further questions regarding the impact of these new requirements or confront any difficulties with your local Board of Elections, you should work with your legal counsel.