



U. S. ELECTION ASSISTANCE COMMISSION
OFFICE OF THE EXECUTIVE DIRECTOR
1225 New York Avenue, NW, Suite 1100
Washington, DC. 20005

September 28, 2006

Peter S. Kosinski
Co-Executive Director
State Board of Elections
40 Steuben Street
Albany, New York 12207-2109

FILE COPY

RE: Certification—HAVA 102 Funding

Dear Mr. Kosinski,

The purpose of this letter is to obtain a certification from you, as New York's Chief State Election Official, regarding the state's use of funds provided under section 102 of the Help America Vote Act (HAVA). These funds were granted to the state for the replacement of punch card or lever voting machines (42 U.S.C. §15302). The U.S. Election Assistance Commission (EAC or Commission) is the Federal agency responsible for administering HAVA §102 funds. On September 12, 2006, New York held its first election for Federal office in 2006. The date of this election represents the deadline for the state's use of the Federal funds it received pursuant to HAVA section 102.³⁷ Now that this deadline has passed, the state must demonstrate that the funds it received were used for the purpose and by the deadlines set forth in HAVA (42 U.S.C. §15302 (a) & (b)). A certification document has been enclosed for this purpose. If New York cannot certify the proper and timely use of the 102 funds, HAVA requires that they are returned to the EAC to be dispersed as requirements payments. (42 U.S.C. §§ 15304 & 15401).

Replacement of Voting Systems. In order to avoid repayment of funds, New York will be required to certify the total number of qualified precincts³⁸ which have replaced all punch card or lever machines in time for the first election for Federal office in 2006 that took place on September 12, 2006. This means that no punch card or lever voting systems were used in the qualified precinct.³⁹ The replacement systems must (1) not use punch cards or levers, (2) meet the requirements of HAVA section 301 (42 U.S.C. §15481) and (3) comply with all other relevant Federal statutory requirements (noted in 42 U.S.C. §15545). Failure to demonstrate compliance will require repayment. The repayment provisions of HAVA require repayment of

³⁷ HAVA initially mandated that the 102 Funds be used to replace voting systems in time for the regularly scheduled general election for Federal office in November 2004. However, the statute provided for the receipt of a waiver extending compliance to the first election for Federal office held after January 1, 2006. (42 USC §15302(a)(3) (A) & (B)). Your state requested and received this waiver. HAVA allows no additional extension of the deadline.

³⁸ Those precincts which used punch card or lever machines to administer the regularly scheduled general election for Federal office held in November of 2000.

³⁹ Replaced punch card or lever voting systems may not be transferred for use in a different precinct.

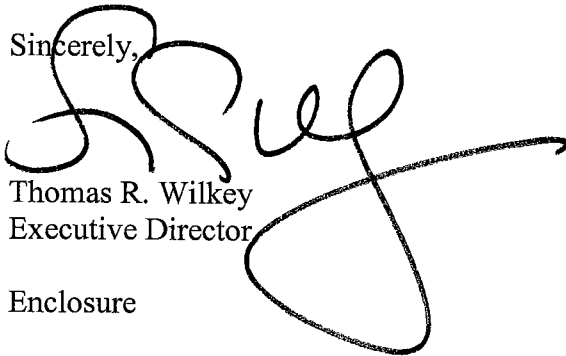
funds on a prorated basis. The rate is established by taking the total number of qualifying precincts which have **fully** met the requirements of HAVA, as a function of the total number of qualifying precincts within the State. (See 42 USC §15302(d)).

Timely Expenditure of Funds. To avoid repayment, New York must also show that all HAVA 102 funds received were used for their designated purpose prior to the September 12, 2006 HAVA deadline. This means that all 102 funds were either expended (finally transferred to another party for consideration) and/or obligated in such a way that the state incurred a legally enforceable liability to another party (such as a local government or contractor) for the full value of its 102 funding. New York must be able to document and certify the status of the 102 funding it received. In the event New York possesses unobligated 102 funds after the deadline, the state will be required to return either an amount equal to the noncompliant precinct percentage, as discussed above, or the total amount of unobligated 102 funds, whichever is greater.

Certification. As Chief State Election Official, we ask that you carefully review the enclosed certification and its instructions. The document shall be filled out by initialing each statement that is true and accurate. If a statement may not be certified as true and accurate it must be lined through and a written and signed explanation attached (see instructions in italics). **The certification must be completed and received by the Commission no later than November 17, 2006. Failure to timely file the enclosed certification will result in the Commission's forwarding of this matter to the EAC's Office of the Inspector General for action.**

Thank you for your attention to this matter. All questions or correspondence should be directed to Edgardo Cortés, Election Assistance Commission, 102 Funds Certification, 1225 New York Ave., NW, Suite 1100, Washington, D.C. 20005 [(202) 566-3100].

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'TW', with a long horizontal stroke extending to the right.

Thomas R. Wilkey
Executive Director

Enclosure



CERTIFICATION: USE OF HAVA SECTION 102 FUNDS AND REPLACEMENT OF PUNCH CARD AND LEVER MACHINES

I, the undersigned, having investigated or caused to be investigated each matter, below; certify, affirm and acknowledge that each of the following numbered statements, and any attachments to this certification document, are true and accurately reflect the status, condition and operations of New York (hereinafter "state") as they related to the use and status of Help America Vote Act (HAVA) Section 102 Funds and the replacement of punch card or lever machines.

I understand that by certifying the information below, I am making a statement or representation to the U.S. Election Assistance Commission, an independent Federal Agency, necessary for the agency to determine New York's required compliance with HAVA Section 102. (42 U.S.C. §15302). Compliance with HAVA Section 102 is required by the state as a result of its accepting Federal funds under that provision. As a condition of receiving 102 funds, the state certified that it would "use the payment... to replace punch card voting systems or lever voting systems (as the case may be) in the qualifying precincts within the state by the deadline prescribed... [first election for Federal office held after January 1, 2006]." (42 U.S.C. §15302(b)).

I further understand that to the extent any of the below (or attached) representations or certifications are found to be materially false, the Federal funds received by the state will be subject to audit and possible recoupment. Further, such false statements may subject the undersigned to criminal prosecution under 18 U.S.C. §1001 or other Federal Statutes.

I. BACKGROUND. *Read the statements below and initial the items that you certify as true and accurate. If you are not able to certify one or more of the following statements, you must line through the statement at issue and attach a signed explanation identifying it and explaining why it may not be certified. The statement (attachment) should provide all necessary facts and concisely explain the conditions that make certification a problem. The explanation shall be labeled "Attachment A, Background."*

1. **Signing Official.** I hereby certify that I am the Chief State Election Official for New York, per 42 U.S.C. 1973gg-8 (National Voter Registration Act).

Initials: _____

2. **Triggering Election.** The First Election for Federal office in 2006 (triggering the deadline noted in 42 U.S.C. 15302 (a)(3)(B)) for the state was held on September 12, 2006.

Initials: _____

3. **Funds Received.** The State received \$49,603,917 in Federal Funds pursuant to HAVA section 102.

Initials: _____

II. PUNCH CARD OR LEVER MACHINE REPLACEMENT. *Read the statements below and initial the items that you certify as true and accurate. If you are not able to certify one or more of the below statements, you must line through the statement at issue and attach a signed explanation identifying it and explaining why it may not be certified. The statement (attachment) should provide all necessary facts and concisely explain the conditions that make certification a problem. The explanation shall be labeled "Attachment B, Punch Card or Lever Machine Replacement."*

1. Qualified Precincts. The State had 15,539 total qualified precincts (precincts which used punch card or lever machines to administer the regularly scheduled general election for Federal office held in November of 2000).

Initials: _____

2. Qualified Precincts: No Punch Card or Lever Machine Used. None of the qualifying precincts, noted in statement 1 above, used a lever or punch card machine in an election for Federal office on or after September 12, 2006.

Initials: _____

3. No Punch Card or Lever Machine Used in State. No precinct in the state used a punch card or lever machine for an election for Federal office on or after September 12, 2006.

Initials: _____

4. Replacement Machines. All machines purchased, leased or otherwise procured to replace punch card or lever machines in qualifying precincts meet the requirements of HAVA section 301 (42 U.S.C. §15481) and comply with all other relevant Federal statutory requirements (noted in 42 U.S.C. §15545). This includes the requirement that each polling place have at least one voting system equipped for individuals with disabilities. *Please provide (below) a complete list of all voting systems procured, leased or otherwise obtained to replace the state's punch card or lever machines.*

Manufacturer	Model	Version	Quantity
1.			
2.			
3.			
4.			
5.			
6.			
7.			

If you need additional space, please continue this table on a separate, signed attachment.

Initials: _____

5. Voting Systems in Place. All voting systems procured to replace punch card or lever machines were in place and used in the state's September 12, 2006 Federal election.

Initials: _____

III. HAVA § 102 FUNDS. *Read the statements below and initial the items that you certify as true and accurate. If you are not able to certify to either response "a" or "b" in statement 1 or statement 2, below, you must line through the statement and attach a signed document explaining why you could not make a certification. The explanation (attachment) should provide all necessary facts and concisely explain the conditions that make certification a problem. The explanation shall be labeled "Attachment C, HAVA §102 Funds."*

1. **Status of HAVA §102 Funds.** Please check the statement below that applies to your state. (*Check only one statement*).

___ (a) The state had none of the \$49,603,917 it received pursuant to HAVA §102 remaining in its election fund after September 12, 2006. This means that as of this date, all 102 funds were expended. Funds are expended when finally transferred to another party (manufacturer or vendor) for consideration (voting system).

___ (b) The state had **only** obligated funds remaining in its election fund after September 12, 2006. This means that as of this date, all funds were either expended or obligated. Funds are expended when finally transferred to another party (manufacturer or vendor) for consideration (voting system). Funds are properly obligated when the state has incurred a legally enforceable liability (such as a grant agreement, contract or lease) to another party (such as a local government or contractor) for a specific portion of the 102 funds. *If the state had only obligated funds in its election funds after the above date, attach a statement explaining the obligation(s). This statement must clearly explain and state the value of the obligated funds remaining and the nature of the obligation. Documentation regarding the obligation should also be attached and explained (e.g. documents from vendor contracts or agreements with local governments). This explanation and supporting documentation shall be labeled "Attachment D, Obligated Funds."*

Initials: _____

2. **Use of HAVA §102 Funds.** All HAVA §102 funds expended or obligated by the state were used to replace punch card or lever machines in qualifying precincts per 42 U.S.C. §15302(a)(2).

Initials: _____

I, by signing my name below, certify, affirm and acknowledge, under penalty of Federal law, that each of the above numbered paragraphs initialed above accurately represent the operations, conditions and practices of New York as they related to the use and status of HAVA Section 102 Funds and the replacement of punch card or lever machines.

Signed this day, _____:
Date

Name

Title