



NASS Resolution on U.S. Election Assistance Commission Interpretation of Maintenance of Effort (MOE) Requirements for State Governments

WHEREAS, the “Help America Vote Act of 2002” (HAVA) requires “States” which receive HAVA money to comply with “maintenance of effort” (MOE) requirements by identifying expenditure levels prior to the passage of HAVA and maintaining those expenditures on an annual basis after the receipt of HAVA money; and

WHEREAS, the U.S. Election Assistance Commission (EAC) has interpreted HAVA to require certain local units of government to comply with “maintenance of effort” requirements; and

WHEREAS, the Help America Vote Act of 2002 includes the following language:

1. 42 U.S.C. 15329 (P.L. 107-252, Section 209): “The (Election Assistance) commission shall not have any authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any State or unit of local government, except to the extent permitted under section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-7(a)).”
2. 42 U.S.C. 15403. (P.L. 107-252, Section 253(c)). “(c) The specific choices on the methods of complying with the elements of a State plan shall be left to the discretion of the states.”
3. 42 U.S.C. 15485. (P.L. 107-252, Section 305): “The specific choices on the methods of complying with the requirements of this title (HAVA, Title III) shall be left to the discretion of the states.”
4. 42 U.S. C. 15541 (P.L. 107-252, Section 901): “In this Act, the term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.”

WHEREAS, local “maintenance of effort” is not mentioned in HAVA, nor was it part of any training or instruction given to state or local election officials in preparation for implementing HAVA; and

WHEREAS, EAC guidance issued on September 6, 2007, interpreting the MOE as including local government expenditures is currently suspended while efforts within the EAC to clarify that MOE does not apply to local units of government are ongoing;

THEREFORE, NOW BE IT RESOLVED THAT the National Association of Secretaries of State (NASS) encourages the U.S. Election Assistance Commission to revise its MOE policy to ensure that it is consistent with HAVA’s policy that local government expenditures are not included in any calculation of the MOE and to continue its suspension of the enforcement of a MOE requirement on local units of government until such time as a new policy is adopted; and

BE IT FURTHER RESOLVED THAT any EAC revision in policy designed to reflect such matters should also be consistent with the plain meaning of the “Help America Vote Act of 2002.”

Expires: Summer 2013

ADOPTED the 28th day of July
in Grand Rapids, MI