

Voter Verified Paper Audit Trail (VVPAT) Funding

Background

California is in a unique situation because of the timing of federal and state voting system mandates placed upon elections officials and the availability of funding to meet those requirements. California elections officials are facing the challenge of meeting both state and federal voting system requirements.

Elections Code section 19250 requires, as of January 1, 2006, that all Direct Recording Electronic (DRE) touch screen voting systems used in California possess a voter verified paper audit trail (VVPAT). This code section also states that to the “extent that they are available for expenditure,” federal funds or moneys from the Voting Modernization Fund shall be used to comply with the VVPAT requirements.

The Help America Vote Act of 2002 (HAVA) specifies standards that voting systems must meet in order to comply with federal mandates. However, HAVA does not require that DRE voting systems come equipped with a VVPAT. The Secretary of State has received guidance from the Election Assistance Commission (EAC) that HAVA funds may **not** be used to **retrofit** an otherwise HAVA-compliant voting system with a VVPAT. A voting system that is equipped with a VVPAT **at the time of its purchase** is an eligible HAVA expense because the VVPAT meets the federal voting system standard for a manual audit capacity.

Counties who began their voting modernization plans before the state requirements for a VVPAT were enacted are now without access to any resources to fund the considerable expense of retrofitting the voting system it purchased to be compliant with the laws that existed at the time of that voting system’s purchase.

Retrofit Funding Option

HAVA Section 251(c)(1) allows a State to “use a requirements payment as reimbursement for costs incurred in obtaining voting equipment which meets the requirements of Section 301 if the State obtains the equipment after the regularly scheduled general election for Federal office held in November 2000.”

The Secretary of State’s Office received an opinion from the EAC that would permit a county to remit funds it received through the Voting Modernization Bond Act and to receive a “retroactive payment,” pursuant to Section 251(c)(1), to pay the costs of purchasing a HAVA Section 301-compliant voting system from HAVA resources received by the State.

The VMB could consider a county request to reimburse the Voting Modernization Fund account with county resources, thereby accepting as a county responsibility, funding the costs of purchasing a HAVA Section 301-compliant system. This action also constitutes retroactive reimbursement to the State as provided for under Section 251 of HAVA.

This action could then make available to a county the remitted VMB allocation for the purposes of funding its equipment that includes VVPAT retrofit.

Change to Approved Project Documentation Plans – Possible Retrofit Process

Pursuant to actions taken by the Board at the February 9, 2004, meeting, the VMB has requested that any county who makes changes to their approved Project Documentation Package come before the VMB before any issuance of payments can be distributed.

The VMB "Funding Application and Procedural Guide" specifically requires an explanation of the reasons why changes were made to the approved Project Documentation Packages, a statement of the impact of these changes on the use of the voting systems in the future, and requires VMB approval of the proposed changes to receive allocated funds.

At a minimum, any county affected by the retrofit funding situation which requests a new funding award for their system that includes VVPAT retrofit costs should include the following information in their submission to the VMB:

1. Explanation of the reasons why the county wants to change their approved Project Documentation Plan.
2. Explanation of the impact of these changes on the use of the voting system (retrofit) in future elections.
3. Explicit statement of how much money they plan to return to the Voting Modernization Fund (VMF).
4. Statement on when the funds will be returned to the VMF and an example of how the accounting mechanisms will be achieved for auditing purposes.
5. Explicit statement of how much funds are being requested for reallocation to their county.
6. An "amended" contract for the retrofit costs.
7. Detailed line item estimates of all project costs associated with the retrofit.
8. Request for a new funding award from the VMB to cover retrofit costs only.

If the VMB, on a case by case basis, approves such a change to a county's Project Documentation Package, that county must be informed that they would not receive any "new" VMB funds until they have actually (1) refunded the VMF for their retrofit costs; (2) the VMB has issued a new funding award letter; (3) county has sent an acknowledgement letter to the VMB for the funding award; and (4) has provided the invoice for retrofit costs.