



## Legislation Text

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**File #:** Res 0291-2006, **Version:** \*

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### Res. No. 291

Resolution urging the New York State Legislature and the State Board of Elections to refrain from implementing the current plan for compliance with the federal Help America Vote Act of 2002 and to concentrate its efforts on ensuring that New York is appropriately HAVA-compliant for 2007 and that the compliance process is transparent and secure.

By Council Members Felder, Jackson, Comrie, Fidler, Dickens, Brewer, Gonzalez, James, Koppell, Mark-Viverito, Nelson, Recchia Jr., Seabrook, Sears, Weprin and Liu

Whereas, Congress passed the Help America Vote Act of 2002 (“HAVA”) largely in response to the 2000 Presidential election debacle; and

Whereas, The purpose of HAVA is to improve the administration of elections in the United States; and

Whereas, Among HAVA’s mandates are that by January 1, 2004, all states must: (i) replace all punch card and lever voting machines; (ii) create a computerized statewide voter registration database; and (iii) provide at least one disabled accessible voting machine at each polling place that provides the same opportunity for access and participation (including privacy and independence) as for other voters; and

Whereas, New York received a one-time waiver from the Department of Justice (“DOJ”), which extended its compliance with HAVA until the first election for federal office held after January 1, 2006, which is the primary election on September 12, 2006; and

Whereas, Despite four years’ notice of HAVA’s requirements and a looming deadline, the State and the State Board of Elections (“State Board”) have taken negligible steps towards implementing HAVA; and

Whereas, In fact, New York is the last state in the country to implement HAVA; and

Whereas, In fact, it was three years after HAVA before the New York State Legislature (“Legislature”) passed the Election Reform and Modernization Act of 2005 (“ERMA”), which outlined how the State planned

to implement HAVA; and

Whereas, ERMA merely shifts the burden to the local Boards of Elections to make the final decision about which systems to select to replace the current lever machines in their respective counties; and

Whereas, The only guidance the Legislature provided to the local Boards in ERMA was that, subject to state certification of the specific models, the local Boards could only choose between the direct recording electronic (DRE) and the paper ballot-optical scan system (PBOS) voting systems; and

Whereas, ERMA exposes the local Boards and, more importantly, the voters of the State of New York to confusion and possibly disenfranchisement because the lack of mandated coordination in voting system selection means that theoretically two counties in close proximity could share the same media outlets and yet choose and advertise for different voting systems; and

Whereas, On March 1, 2006, the United States DOJ sued the State of New York and the New York State Board of Elections in federal Court, alleging that the State failed to comply with HAVA by not ensuring that its voting systems met HAVA's standards and failed to create and implement a computerized statewide voter registration database; and

Whereas, On March 6, 2006, the DOJ moved for a preliminary injunction requiring that the State comply with HAVA and file a plan specifying how it will do so; and

Whereas, On March 23, 2006, the Court granted the preliminary injunction as a result of its finding that the State Board was not yet in compliance with HAVA; and

Whereas, The Court ordered the State Board to take all necessary steps to comply with HAVA as soon as practicable, in accordance with a short term remedial plan to be approved by the Court; and

Whereas, Additionally, the Court ordered that the State Board file a longer term comprehensive plan for compliance with HAVA, by April 10, 2006; and

Whereas, Pursuant to the Court's order, on April 10, 2006, the State Board filed its proposed plan for compliance (the "Plan"); and

Whereas, As required by the Court’s order, the plan consists of a short term remedial plan for 2006 and a longer term plan for 2007; and

Whereas, The Plan for 2006 provides for the acquisition of “ballot marking devices” to assist disabled voters throughout the State; and

Whereas, Pursuant to the Plan for 2006, the State Board must: (i) accept ballot marking machines by April 10, 2006, (2) test the machines by May 5, 2006 and (3) conduct pre-election testing of the machines by September 11, 2006; and

Whereas, On April 20, 2006, the State Board filed a “summary of county responses,” which sets forth the number of ballot marking devices that each county in the State would install by September 2006; and

Whereas, In reliance upon U.S. Census data and other data from the New York City Department of City Planning, the City Board indicated in its county response to the State that the City could only feasibly implement disabled accessible ballot marking devices in 20 to 30 polling sites; and

Whereas, Further, the City Board expressed concern in its county response regarding the 2006 implementation because the two voting machines that it has tested are both “relatively new on the market and have very limited track records in elections”; and

Whereas, In addition, the City Board expressed reservations in its county response with the wisdom of obtaining disabled accessible ballot marking devices for 2006 because “it is possible that any devices bought this year may be used only once because when the State Board finally provides a selection of certified HAVA-compliant voting systems, some of these systems may allow disabled voters to use the same equipment as other voters instead of separate ballot marking devices”; and

Whereas, The Plan for 2006 threatens to disenfranchise voters due to the lack of adequate time to properly educate voters and train poll workers, and because it lacks the transparency required by ERMA; and

Whereas, The longer term Plan for 2007 discusses the procedure for replacing the lever voting machines statewide by the 2007 elections; and

Whereas, While, pursuant to the Plan for 2007, the State must adopt voting systems standards regulations, after which there will be certification testing, final certification, the awarding of contracts, and final acceptance testing, it fails to provide any concrete details about this process; and

Whereas, Consequently, at this late juncture, the Plan for 2007 is an inadequate plan; and

Whereas, Although the State Board adopted final voting systems regulations on April 20, 2006, there are still many steps that must take place before the systems are procured; and

Whereas, The Plan for 2007 does not include a process for selecting and testing new voting equipment that is transparent and accessible to all citizens; and

Whereas, The State and the State Board must take all measures necessary to involve the public in the process of selecting new accessible voting systems and to instill confidence in the public that the process for selecting new voting systems will be open and transparent; and

Whereas, Therefore, the State and the State Board must conduct statewide public hearings to assess the ease of use and accuracy of all systems under consideration, and to certify for all systems under consideration, that all work necessary for the conduct of elections can be performed by bi-partisan elections staff and will not require the delegation of any tasks to vendor technicians for any reason; and

Whereas, The State must conduct functionality tests by people with disabilities of the accessible features of the voting systems and demonstrate that arrangements made meet access standards; and

Whereas, The Plan submitted by the State Board should therefore be rejected by the Court; and

Whereas, Instead, the State Board should submit a more comprehensive implementation plan and obtain public input that reflects the level of diligence and consideration that the issue of implementation of new voting technology merits; now, therefore, be it

Resolved, That the council of the city of New York urges the New York State Legislature and the State Board of Elections to refrain from implementing the current plan for compliance with the federal Help America Vote Act of 2002 and to concentrate its efforts on ensuring that New York is appropriately HAVA-compliant for

2007 and that the compliance process is transparent and secure.

DJ  
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