

No. 59-05-RE

A RESOLUTION

A Resolution of the County of Allegheny, Commonwealth of Pennsylvania, urging the General Assembly, the Governor, Congress, and the United States Department of Justice to examine the possibility and potential means of adjusting the schedule by which compliance with Section 301 of the Help America Vote Act will be enforced.

WHEREAS, the Help America Vote Act ("the Act") was signed into law in 2002; and

WHEREAS, the Act establishes that federal funding will be made available to counties which replace lever voting machines with machines that meet certain requirements, among which is handicapped accessibility; and

WHEREAS, the United States Department of Justice, Civil Rights Division has been vested with enforcement responsibility for Title III of the Act, which governs uniform and nondiscriminatory election technology and administration requirements placed upon the 55 States and Territories; and

WHEREAS, under the terms of Section 102 of the Act, all of Allegheny County's lever voting machines must be replaced "in time for the first election for Federal Office held after January 1, 2006," 42 U.S.C. Sec. 15302(a)(3); and

WHEREAS, although the Act is not clear with regard to whether a Primary Election qualifies as an "election for Federal Office" under the terms of Section 102, the earliest that such an election may even arguably take place in Allegheny County is May of 2006; and

WHEREAS, the Department of Justice has indicated that the various counties must be in compliance with the provisions of Section 301 of the Act, 42 U.S.C. Sec. 15481, which pertain to audit capacity, handicapped accessibility, and other general requirements for all paper ballot, lever, electronic, and other voting systems, by having the mandated systems *ready for use* by January 1, 2006; and

WHEREAS, the Department of Justice has indicated that the earlier deadline for Section 301 compliance is necessary in order to allow time "to train poll workers, educate voters, and conduct testing on new voting systems prior to their use in the first election for federal office next year," Department of Justice letter to the Louisiana Commissioner of Elections and General Counsel, May 10, 2005, but it is not clear why these factors should be more of a concern under Section 301 than they are under Section 102 of the Act; and

WHEREAS, the two different deadlines imposed under Sections 102 and 301 of the Act create undue difficulties in complying with the requirements of the Act, because the County must

now weigh the wisdom of selecting one of the certified systems that are available by December 31 for all machines in all polling places in order to be in compliance with Section 301 and running the risk that a preferable alternative will be certified by the state after the selection is made, versus the wisdom of postponing the selection of new voting machines until a more comprehensive list of certified machines is available and not being in compliance with Section 301 if such a list is not available in a timely fashion; and

WHEREAS, as of December 1, 2005, Pennsylvania has only certified two voting machines as HAVA-compliant;

The Council of the County of Allegheny hereby resolves as follows:

SECTION 1.

County Council hereby expresses its sense that a consensus must be reached among the state, Congress, and the Department of Justice with regard to standardizing the compliance requirements set forth in Sections 102 and 301 of the Help America Vote Act. Such consensus should take into account the uncertainty and difficulties created by the availability of two certified HAVA-compliant voting systems in Pennsylvania, as well as the delays inherent in the selection, purchasing, shipping, training, and implementation timetables. Council recommends that, by legislative or other means, the compliance deadlines for Sections 102 and 301 be extended to June 30, 2006.

SECTION 2.

Copies of this Resolution shall be transmitted to the General Assembly, the Office of the Governor, the United States Congress, and the United States Department of Justice.

SECTION 3.

If any provision of this Resolution shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Resolution which shall be in full force and effect.

SECTION 4.

Any Resolution or Ordinance or part thereof conflicting with the provisions of this Resolution is hereby repealed so far as the same affects this Resolution.

SPONSORED BY COUNCIL PRESIDENT FITZGERALD

Enacted in Council, this 6th day of December, 2005

Council Agenda No. 2241-05



Rich Fitzgerald
President of Council

Attest: John Mascio
John Mascio
Chief Clerk of Council

Chief Executive Office Dec 15, 2005

Approved: [Signature]
Dan Onorato
Chief Executive

Attest: Donna M. Beltz
Donna Beltz
Executive's Secretary