(1) This document outlines procedures for implementing 1 VAC 20-20-80(B), the receipt and disposition of complaints filed with the State Board of Elections (Board) alleging violations of Title III of the Help America Vote Act of 2002 (HAVA). The rule is intended to fully comply with all federal requirements for the complaint procedure, as described in Section 402 of HAVA (42 USC 15512).

(2) The procedures described are to be used solely for complaints filed alleging a violation of Title III of HAVA. Title III includes voting system standards; accessibility of voting systems to persons with disabilities; instructions on correcting voting errors; identification requirements for voting in federal elections if registration was by mail; statewide computerized voter registration list; contents of registration forms; and provisional voting.

(3) State and county elections officials are encouraged to resolve complaints informally if possible. If informal resolution is not possible, and a person wishes to file a formal HAVA complaint under this procedure, the person shall use the required complaint form (SBE Form 15512). The complaint will be accepted and processed only if made in writing, signed under oath by the person filing the complaint, and notarized. The complaint form must be filed directly with the State Board of Elections. If the complaint is submitted to a county or city elections office, the local official shall promptly forward the original complaint to the Board. The complaint shall be considered filed on the day it is received at the office of the State Board of Elections.

(4) Upon receipt of a complaint, the Board staff will review the complaint to determine if it alleges a violation of Title III of HAVA. If the complaint does not allege a violation of Title III, the complaint will be treated as an informal complaint under 1 VAC 20-20-80. Informal complaints will not be subject to alternative dispute resolution procedures outlined below. If the complaint alleges a violation of Title III, the complaint will be acknowledged in writing, and the complainant will be offered the opportunity to request a hearing on the record. Similar complaints may be consolidated at the discretion of the Board. A hearing on the record may be provided by telephone or in person. The Board staff will then request information from other persons who may have information related to the substance of the complaint, including local election officials. When the responses are received, copies will be sent to the complainant to provide an opportunity for the complainant to respond or rebut the information provided. Unless the complainant requested a hearing on the record, or the State Board of Elections chooses to provide such a hearing because of the nature of the allegations and responses, the Board will prepare a determination letter based on the information provided in the complaint or compiled by the Board staff during review of the complaint. The determination letter will address whether any violation of Title III has occurred and address how to resolve the problem to avoid its occurrence in the future.

(5) If a hearing on the record is scheduled, the State Board of Elections will decide whether the hearing is to be conducted by telephone or in-person. The complainant and other persons who have relevant information to provide will be invited to participate. The hearing will be conducted before a Board employee. The purpose of the hearing is to determine whether any procedure required by Title III was not correctly followed, and to develop a plan to make sure the violation, if any, does not happen again. The hearing is to be conducted as a fact-finding, problem solving forum. A record must be kept, including copies of any documents submitted and minutes, a tape, or other record of the hearing.

(6) Whether the complaint is resolved through the procedures of subsections (4) or (5), the final determination will be prepared by the State Board of Elections. If the outcome of the proceeding requires the provision of a remedy, the remedy must conform to state elections law and will not include financial payments to complainants or civil penalties against other involved individuals. Remedies may include written findings that a violation of Title III has occurred, strategies for ensuring that that violation does not occur again, and, if it appears that the complaint involves a systemic problem, possible actions by the Board to provide better instructions, training or procedures to all election officials to avoid future violations.

(7) Final determination letters will be signed by the Secretary or Deputy Secretary of the State Board of Elections. All determination letters will be posted on the Board’s website. A copy of the final determination will be provided to the complainant. Informal complaints will be resolved by Board staff and responses may be provided by phone, email, or mail, as deemed appropriate.

(8) The Board will handle all complaints filed under these procedures in a way that allows a final determination to be issued within 90 days of the receipt of the complaint. If delays appear to put the 90 day deadline at risk, the Board may ask the complainant to provide an extension to complete the investigation or to conduct the hearing. If the complainant does not agree to provide an extension, the final determination must either be issued within the 90 days, or the matter must be referred to the alternative dispute resolution process described in subsection (9). Informal complaints are not subject to the requirement for alternative dispute resolution.

(9) The State Board of Elections will provide an alternative dispute resolution process for complaints that are not resolved within 90 days of the filing of the complaint (unless an extension is granted by the complainant) or for complaints that the Board, in its sole discretion, determine warrant this action. The alternative dispute resolution process is intended to be a consensus or cooperative outcome procedure, not an arbitration or mediation process model with adversaries or parties. The Board will select a person from a panel of volunteers who agree to provide their services to convene a meeting of the interested parties to resolve a particular complaint or complaints. All volunteers must be employed by an agency of the Commonwealth of Virginia. The panel member will then recommend an outcome to the Secretary of the Board, to be adopted within 60 days of the referral. The Secretary will adopt the recommendation, or a revised version of the recommendation, as appropriate. Final determinations reached following this alternative dispute resolution process shall be publicized and distributed in the manner described in subsection (7).

(10) Final determinations issued under subsection (7) may be appealed to the full State Board of Elections within 15 days of issuance. The Board may decide the appeal based on the information already available in the record or may determine to hold a hearing regarding the matter. The Board will decide all appeals within 45 days of the request for an appeal by a complainant.