

VMB Project Documentation Plan Deadline

Background

While the Voting Modernization Act of 2002 (Proposition 41) does not indicate a schedule for allocation of funds to counties to modernize voting systems, from its inception the Voting Modernization Board adopted an aggressive schedule to allocate and distribute funds.

A "Project Documentation Plan" detailing a county's voting system conversion plan and executed vendor contract is required as part of the application for funding process. By requiring this detailed conversion plan and signed vendor contract from the county before any funding award and disbursements occur, the Voting Modernization Board (VMB) is able to ensure that any new voting system complies with the specific requirements of Proposition 41. To date, 22 counties have submitted their "Project Documentation Plans" and have been issued a "Funding Award" letter authorizing disbursement of their specified formula allocation.

Federal legislation established the Help America Vote Act of 2002 (HAVA), which requires voting system equipment to meet specified standards by January 1, 2006. Included in these standards is a requirement to have at least one accessible voting machine in each polling site or fully converting to an accessible Direct Recoding Electronic (DRE) system. Also included is a requirement that the system produce "a permanent paper record with a manual audit capacity" for each voting system.

State law requires that Voting Modernization Funds received from the VMB shall be used for the purpose of placing at least one accessible voting unit in each polling place (Elections Code § 19227(b).) Newly enacted state law, effective January 1, 2005, requires that all DRE voting systems must receive federal qualification and include an Accessible Voter Verified Paper Audit Trail (AVVPAT) by January 1, 2006, in order for the equipment to be certified and used in California (Elections Code §§ 19250, 19251). Also, to the extent that Voting Modernization Fund monies are available for expenditure, these funds shall be used to comply with the new AVVPAT requirement (Elections Code § 19252).

Given the requirement that all fund monies only be used to purchase systems certified by the Secretary of State, until there are DRE units certified with the AVVPAT components, the VMB would only be able to consider approving allocations for counties that are upgrading to optical scan voting system technology.

VMB Project Documentation Package Deadline

At the July 22, 2004, meeting of the VMB, the Board voted to move the deadline for counties to submit their Project Documentation Plans from January 1, 2005 to July 1, 2005.

It was the underlying belief that by establishing this deadline the VMB could compel the counties to meet the HAVA January 1, 2006, compliance deadline and accelerate the voting system modernization process in California.

Given that there has been no movement in the past six months in the availability of certified voting system for the counties to purchase, the objective of accelerating the voting system modernization process in California may need to be reconsidered.

There has been a shift in the attitude and environment surrounding the modernization of voting equipment since the passage of Proposition 41. The security of electronic voting equipment has been scrutinized in the media, and the transition of jurisdictions to upgrade their voting system technology has been called in to question. This shift, coupled with the uncertainty of maintainable certification of voting systems in California, has led some counties to slow efforts toward modernizing their voting equipment. Arguably, some counties who led the state in modernizing their voting systems have been faced with de-certification of their voting system and additional requirements being placed on their new voting system technology.

The advancement into any new technology is fraught with uncertainties; however, new state and federal mandates dictate the advancement to more readily accessible voting equipment. All voting system vendors who currently sell their voting equipment in California are in the process of developing accessible voting equipment to be compliant with HAVA. To date, however, no voting system has been certified that meets the HAVA requirements, the new requirements of state law, and the Secretary of State guidelines for AVVPAT, and has obtained federal qualification and state certification.

As Proposition 41 does not specify a deadline to allocate the fund monies, the VMB could reconsider the July 1, 2005, deadline for counties to submit their Project Documentation Plans.

Deadline Options:

Option One:

The VMB could maintain the adopted **July 1, 2005**, project plan deadline and move that counties that do not receive approval by the July 1, 2005, deadline forfeit their Approved Allocation. Maintaining this date could allow the VMB to conduct additional funding rounds for the money not used by the deadline. The VMB could reallocate these reverted funds to counties who have converted to new systems by the deadline but did not receive enough funding to pay for their new system. In addition, the reallocated funds could be used to offset the costs to counties that have already converted to DRE systems that are required to be upgraded with the new AVVPAT requirement.

Option Two:

The VMB could move the project plan deadline to **January 1, 2006**, to be consistent with HAVA, but require each county to submit "Interim Status Reports" on their voting modernization status until they fulfill the Project Documentation Plan requirement. With more than half of the 58 counties yet to begin upgrading their voting systems and the counties vigorously supporting an extension of the deadline, extending the deadline to January 1, 2006, could be considered a practical option. This option could enable the VMB to address the concerns of the counties regarding the unknown availability of certified systems to be sold in California, while giving the Board the ability to ensure that counties are moving forward in the development of their voting system modernization plans.

Option Three:

The VMB could move the deadline to **March 1, 2006, or longer**, but require each county to submit "Interim Status Reports" on their voting modernization status until they fulfill the Project Documentation Package requirement. This option would allow the counties additional time to submit their Project Documentation Plans to the VMB. While HAVA requires that voting equipment be accessible by January 1, 2006, the first statewide federal election in which this equipment would be used is the June 2006 Primary Election. This option would allow counties more time to submit their Project Documentation Plan before their formula allocation would be reverted to the fund for additional funding rounds.