

From: *California Association of Clerks and Elections Officials (Vice President Gail Pellerin)*

July 9, 2010

Honorable Debra Bowen
Attention: Chris Reynolds
Secretary of State
State of California
1500 11th Street, 6th Floor
Sacramento, CA 95814

Re: California Association of Clerks and Election Officials comments on HAVA State Plan

Dear Secretary Bowen,

The California Association of Clerks and Election Officials (CACEO) greatly appreciates the effort that has gone into producing the Help America Vote Act State Plan Update (the Plan). As part of the public comment process, we would like to highlight some areas of interest that emerged upon review of the document.

Voter Education and Pollworker Training Funding

Many counties have found the recent developments regarding a referenced Election Assistance Commission (EAC) opinion extremely problematic. (See for example the reference to EAC “guidance”, page 36 bottom paragraph.) We would hope that the State Plan would not be positioned to accept this opinion as final and/or non-controversial since it – in mid stream and without notice – changed the general character of California counties long and short term commitments to voter education and pollworker training.

That is, from the initiation of state 301 contracts and up to the time that this EAC opinion was made known to counties, there can be no doubt that counties were under the specific impression that there would be ongoing funding for HAVA related Voter Education and Pollworker training programs and had planned operations as such and, indeed in some cases, incurred significant costs based on this impression.

We would suggest that the Plan reflect this state of affairs.

RESPONSE

The Secretary of State’s office agrees without question that voter education and poll worker training is a critical link in improving the administration of elections generally and in implementing a law as sweeping as HAVA.

However, the EAC guidance is clear and determinative. This guidance was issued in direct response to a request from the Secretary of State’s office in an effort to minimize

the risk that expenditures might be disallowed in an audit of the state's HAVA program and trigger a need for the state or counties to refund disallowed expenses to the federal government. The Secretary of State appealed the EAC staff decision to the EAC Commissioners at a March 20, 2008, public hearing, and made a request for an advisory opinion on July 10, 2008. Unfortunately, the staff decision was upheld by the Commission and as a result funding for voter education and poll worker training is allowable under only fairly narrow circumstances – when a new voting system is deployed, or when counties use a paper-based, centrally tabulated voting system and use a voter education program to prevent overvoting as provided for in HAVA Section 301 (a)(1)(B).

Your point that the EAC has the option of reversing its guidance in the future is important. As such, language will be added to the State Plan update to emphasize that the EAC decision was made at a point in time and could be altered or reversed in the future.

Election Training Fund

Page 43 and 73 of the Plan state that, “California’s initial State Plan and 2004 update contemplated the creation of Election Academy to train prospective election officials. A significant amount of the funding - \$25 million was earmarked for this purpose, but there is no indication that any curriculum or program design work was initiated.” The Plan then goes on to cite election official education efforts that are ongoing including the CACEO California Professional Elections Administration Credential (CalPEAC) election officials training classes which address HAVA implementation that have taken place during the course of the prior Plans.

Although we recognize the value of the efforts outside of the Election Academy idea that are listed on pages 43 and 73, we feel that the implementation of the Election Academy – or something very similar and funded at the same level – would contribute significantly to the election profession in California.

As the Plan currently reads, it is not necessarily clear that there is or is not a commitment to follow through with the Election Academy idea. We would suggest that the Plan address this concern clearly.

We would also specifically suggest that the first sentence of the last bullet on page 73 read "Finally, the initial State Plan allocated \$25 million for an Election Academy, which was incorporated into the 2004 State Plan updated, was not implemented" to include the exact dollar figure that was originally allocated.

RESPONSE

This issue is also subject to the limitation placed on the use of the Title II funds budgeted in the State Plan update. As indicated previously, these funds must be used exclusively for the purpose of meeting Title III requirements. Those Title III requirements, as noted earlier, are purchasing voting systems that meet HAVA Section 301 standards; providing voter information at polling places and providing provisional

voting rights under HAVA Section 302; and creation of a statewide voter registration system as described by HAVA Section 303.

An Election Academy as described in California's initial 2003 HAVA State Plan is not a Title III requirement and is therefore not an allowable expense. The Secretary of State has, in the absence of creating an Election Academy taken other allowable steps to inform and educate elections officials about HAVA. Those steps include maintaining continual contact to serve as a liaison with federal agencies and clarify HAVA administrative and policy matters; issuing memos on an as needed basis for those same purposes; developing a HAVA compliance manual in collaboration with counties; and providing Title I funding, which can be used for this purpose, to help fund the most recent California Association of Clerks and Election Officials (CACEO) California Professional Election Administration Credential (CalPEAC) program, the election officials' training and certification classes, which include HAVA curriculum.

Regarding the request for the exact dollar figure that was originally allocated, the sentence quoted verbatim from the State Plan update includes the exact dollar figure that was originally allocated – \$25 million.

VoteCal

Page 4 of the Plan documents the steps that have been taken in the development of VoteCal, and concludes by stating, "The Secretary of State will be moving quickly to assess lessons learned on the VoteCal project so far and determine the appropriate next steps, including renewing efforts to contract with a private vendor to build and deploy the VoteCal system." Though the events leading to the VoteCal vendor contract termination happened recently, it would be helpful to include a projected timeline for completion of the various stages of VoteCal's development. Additionally, it would be helpful to identify the funding mechanism for the continuation of this project. If Title III funding is to be used, it would be helpful to state why and how this money will be used here and in other sections that describe the VoteCal project.

RESPONSE

The projected timeline for the VoteCal is an estimate that became available on July 19, 2010 – 10 days after the close of the public comment period for the State Plan update. The estimate for full deployment to all counties of the VoteCal system – June 2014 – is included in a Special Project Report (SPR) that is still awaiting approval from state oversight agencies. That approval must be granted before the Secretary of State can begin preparing for release of a Request for Proposal (RFP) to seek bids for the project. However, that projected timeline in the SPR is speculative – the schedule for full deployment of the VoteCal system to all counties will be finalized in collaboration with the vendor that is selected for the project. The expected timeline for award of a contract to a vendor, which is also subject to change, anticipates awarding the contract to a system integration vendor in September 2011. This new information will be added to the State Plan update.

As to the question about the funding for the project, again, the VoteCal project is a Title III requirement (see HAVA Section 303) and is required to be included in the State Plan

update budget. That is why the budget in Section 6 of this State Plan update clearly includes the use of these funds for this purpose. Again, the budget in Section 6 identifies the \$195 million that has been allocated to counties for voting system purchases to meet the requirements of Section 301, and includes the best available estimate at this time of \$65.6 million to establish and deploy the VoteCal voter registration system because these are the Title III requirements for which HAVA Title II money, the money budgeted under this State Plan update, are intended as a first priority.

Cost Summary

Although costs incurred and projected to be incurred appear throughout the document, it would be extremely beneficial for the Plan to include a summary chart or line item list in the Overview or in an appendix of total costs incurred to date and fund balance and – if possible – line item projections of costs to be incurred. Although we understand that this may be difficult given that the document points out that HAVA implementation issues are still in flux, it still seems that it would be of much value to include such a summary document.

RESPONSE

This comment includes two different requests for information.

The first request is for an accounting of HAVA funds previously allocated and spent. As the comment indicates, information on prior use of HAVA funds is provided throughout the document, giving the reader the programmatic context of the expenditures, in addition to the dollar values (see Sections 1, 2, 3, 6, 10 and 12). To help clarify how money has been spent, the Secretary of State will add a summary sheet showing receipt of funds, descriptions and amounts of expenditures and balances to the State Plan update. The spending summary requested by the comment will be provided in Section 12 of the State Plan because that section provides readers with information about how the State succeeded in carrying out the State Plan in previous years.

The second request appears to reference information already provided in Section 6. In that section, the budget clearly identifies, as required by HAVA, the dedication of the funding that is the subject of this State Plan update – Title II funding – which is used to meet Title III requirements. Title III requirements include purchasing voting systems that meet HAVA Section 301 standards; providing voter information at polling places and providing provisional voting rights; and creation of a statewide voter registration system as described by HAVA Section 303. The budget in Section 6 reflects the continued commitment of the Secretary of State to the \$195 million allocated to counties through contracts for voting system upgrades and allowable poll worker training and voter education first initiated in December 2005. These funds, in fact, are the funds allocated to counties, for voting system replacement/modernization. This budget is the clear statement of intent to preserve that funding allocation that the comment requests. Furthermore, the Secretary of State is in the process now of extending the contractual deadline for expenditure of those funds from December 31, 2010, to December 31, 2012, subject to legislative approval. As the comment notes, completion of the VoteCal project – the statewide voter registration

database – required by HAVA Section 303 is the other Title III eligible expense identified in the budget. The VoteCal project is one of the four priority areas in Title III mentioned above that the funds being budgeted by this State Plan update must be spent on first. As such, VoteCal is the other major expenditure identified in this State Plan update budget.

Repeated Elements

We greatly respect the need for the Plan to be comprehensive and its treatment of each of the 13 sections – without doubt – was aimed at being as thorough as possible. However, in being comprehensive, many elements are repeated several times – verbatim or nearly so - which contributes to the documents length. That length may make the Plan difficult to approach or understand.

We would suggest that there may be an opportunity to make the document more approachable by using references to elements instead of repeating them verbatim or nearly so. For example, there is language regarding the Statewide database and the Top-to-Bottom-Review that is repeated exactly or almost exactly in some areas of the document. Our suggestion would be that those elements – when they are subsequently repeated – be repeated by reference rather than at length.

RESPONSE

HAVA is a complex measure and the implementation measures taken to respond to HAVA requirements are even more complex. It was considered helpful for purposes of clarity, therefore, to provide a full explanation of the steps taken for HAVA implementation in each section of the plan where it was appropriate. This approach makes it possible to read each section of the plan independently without losing content and context.

Revising the State Plan update as proposed could have the unintended effect of making the document less clear and more ambiguous, and risks leaving out information the public may consider useful and helpful.

Approval Orders

Page 46, second paragraph, the Plan states that on August 3, 2007, “withdrawal of approval and approval orders based upon the findings of the top-to-bottom review for voting systems by three vendors” were released. We feel that it would be more accurate to state that the final approval orders were issued at the end of October 2007.

RESPONSE

The Secretary of State issued the final withdrawal and approval orders on August 3, 2007. However, as the comment indicates, those final withdrawal and approval orders were subsequently amended in October 2007. The State Plan update will be amended on Page 46 to reflect this fact.

Plan Deviation

Page 71 describes “factors that contributed to deviations in steps outlined in earlier State Plans ...” We would suggest that point number 4 (“Delay in receiving HAVA funding and HAVA guidance”) should contain more information regarding specific details regarding ongoing interpretations that effectively made budget planning throughout the state a kind of moving target. (See, for example, the EAC interpretation that is referenced in ***Voter Education and Pollworker Training Funding*** above.)

RESPONSE

This comment is correct and the State Plan update will be amended on Page 71.

Modified Primary vs. Proposition 14

Page 10 of the Plan describes various unique circumstances that add to the complexity of California’s election, including the third bullet point which describes primary election participation rules. This section will need to be updated to reflect the new Proposition 14 primary election system and the handling of decline to state voters, if this section is to remain at all.

RESPONSE

The passage of Proposition 14 at the June 8, 2010, Statewide Primary Election preceded the release of the State Plan update on June 10 by two days. The State plan update will be amended to note the passage of Proposition 14.

(END OF COMMENTS)

Thank you again for accepting our commentary regarding the State Plan.

If you have questions, please contact CACEO Vice-President Gail Pellerin at 831-454-2419.

Sincerely,

Rebecca Martinez
CACEO President



Gail L. Pellerin
CACEO Vice-President