

From: California Common Cause

July 9, 2010

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

RE: HAVA State Plan 2010 Update

Dear Secretary Bowen:

On behalf of California Common Cause, I write to thank you for convening the Help America Vote Act State Plan Advisory Committee (HAVA Advisory Committee) to participate in a process of providing insight and input to California's 2010 State Plan Update. In particular, we acknowledge the tremendous amount of time and effort that Chris Reynolds and numerous other Secretary of State staff have put into meeting with the HAVA Advisory Committee and writing the various iterations of a draft State Plan. I believe there was a significant amount of concurrence between the various members of the HAVA Advisory Committee, which included county voter registrars, voting rights organizations, good government groups, and academics.

Based on the overall discussion of the HAVA Advisory Committee, the consensus of the group was to create a State Plan Update that would both provide both a historical review of California's experience with election issues and efforts to meet the requirements of the Help America Vote Act, as well as serve as a road map for how the state would meet its continuing HAVA obligations as well as to set a standard for effective, responsive and accessible voting in the future. The SOS staff have effectively written a document that provides a good historical review.

Introduction

The language in the Introductory Section is much improved and reflects many of the comments provided by the HAVA Advisory Committee. In a joint letter from several Committee members sent in February 2009, we recommended a list of goals which we observe have been largely included in the Introduction. One omission was any reference to goals surrounding the implementation of a statewide voter registration database. Our recommended sentence was: "California will ensure that the statewide voter registration database is designed and maintained in a manner that is integrated with its voter registration efforts." We do suggest that some language be included in this statement of goals that references the creation of a functional statewide database.

RESPONSE

The specific language provided to the Secretary of State seems somewhat ambiguous with respect to intent, since the main purpose of a statewide voter registration database

is to ensure people who want to register to vote have their registration information accurately captured. The Secretary of State will add the following language to the Introduction section: "The Secretary of State will ensure the statewide voter registration system required by HAVA is designed and operated in a manner that is consistent with HAVA Section 303 requirements to ensure that every legally registered voter is included in the VoteCal system and that no eligible voters be removed from the list."

Section 6

However, we believe that the State Plan Update should reflect the input of the HAVA Advisory Committee to include a more clear description of plans for the future. Both in meeting discussions as well as in a letter sent in February 2010, the HAVA Advisory Committee members made specific recommendations of future plans and performance measures that should be included. At least two sections where future plans can be delineated in greater detail are Sections 6 and 8.

The HAVA Advisory Committee generally agreed that plans should be laid out in Section 6 for how HAVA funds should be spent, in the event that all HAVA requirements had been met, including the implementation of the Statewide Voter Registration Database. The HAVA Advisory Committee proposed in a February letter that the Secretary of State set up Local Government Grant Program similar to other states to review proposals from counties to disperse grants that would fulfill the overall mission of HAVA. We believe that the current draft does an excellent job of laying out the plans for expending funds to establish the database, as the final specific requirement of HAVA left for the state to fulfill. The State Plan should additionally lay out a framework for deciding how any residual funds would be spent. This framework might not be implemented until after the database was implemented and operational. However, setting up the framework, whether it is the Local Government Grant Program, or another framework, in advance would lead to greater transparency about the process and allow counties to make longer term plans around voting systems and operations investments.

The Overview of the State Plan lays out the steps that have been taken in the development of VoteCal. We recommend that the language in Section 6, starting on Page 49 not simply be a restatement of the language in the Overview, but that it provide greater detail as to the challenges of implementing a statewide database in California, and also include a projected timeline for completion of the various stages of the Statewide Voter Registration Database's development.

RESPONSE

As discussed in responses to similar comments raised by Los Angeles County, the Secretary of State appreciates the benefits to be gained from providing additional resources for the types of activities identified by the advisory committee, including voter education programs, election official and poll worker training, maintaining voting equipment and modernizing polling places.

However, as the comment and State Plan update draft language describing the grant program notes, such a program would be contingent upon EAC guidance as to when

State Plan update budgeted funds may be used to improve the administration of elections.

According to HAVA, once the state certifies it complies with the HAVA Title III requirements noted above, these funds may be used to improve the administration of elections (see HAVA Sections 254(b)(2) and 251(b)(2)(A)). The Secretary of State has not yet certified to HAVA Title III compliance. Therefore, funds budgeted under this State Plan update must be used to meet Title III requirements. With the exception of voting system maintenance, the elements proposed under the advisory committee's Local Government Grant Program are not Title III requirements. Voting system maintenance is clearly an allowable expense and the Secretary of State has reimbursed counties for these expenses. In addition, the Secretary of State's office has allowed counties to expend funds for voter education and poll worker training activities in certain circumstances, as described in EAC guidance FAO 08-011 and whenever those costs fall under the minimum requirements payment program created by the Secretary of State pursuant to HAVA Section 251 (b)(2)(B).

Finally, the advisory committee's proposed Local Grant Program recommended that counties be allowed to use funds to improve polling place accessibility. There is an existing program for these purposes that uses HAVA Section 261 funds, funding that is not reflected in this State Plan update. Under that polling place accessibility improvement program, the Secretary of State provided all counties with a proportionate share of \$3.345 million in HAVA Section 261 funds. In addition, the Secretary of State has awarded, through a competitive grant program, an additional \$2.6 million to 21 counties. A third round of competitive grants available to counties that had not previously been awarded grants will be awarded later this year. Lastly, in 2010 the Secretary of State updated the statewide guidelines used to assess the physical access to polling places and allocated \$176,000 in grants to counties, so county surveyors could be trained on the new guidelines, as well as conduct surveys and purchase mitigation supplies to improve accessibility.

Despite the limitations placed on the use of funding by HAVA, this State Plan update provides the necessary flexibility to respond to the kinds of needs described in the advisory committee's proposed Local Government Grant Program in the future. As the budget in Section 6 explains, funds that do not need to be budgeted for Title III purposes at this time will be used in the future either to meet Title III requirements or to improve the administration of elections. As noted, the VoteCal statewide voter registration system, a Title III requirement, has not yet gone out for rebid and Title III compliance has not been certified at this time. Final costs for the VoteCal project, including maintenance and operation costs, are unknown at this time. However, at the appropriate time, this State Plan update, as drafted, will provide the Secretary of State with the flexibility to meet mandated costs and other appropriate needs.

For these reasons, the advisory committee's proposed Local Government Grant program will not be included in the State Plan update.

As regards additional language to describe the challenges and timeline for implementing the VoteCal project, there is information on the Secretary of State's

website that describes in great detail the efforts that have been made thus far at www.sos.ca.gov/elections/votecal/, which speak to the complexity of the project. It should be noted that the scope of the VoteCal project is undergoing review, based on lessons learned to date, a process that will take months to complete. That process may result in changes to the project scope.

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.

A link to information about the VoteCal project and this new information about the projected timeline for the project will be added to the State Plan update.

Section 8

The HAVA Advisory Committee discussed adding performance measures in Section 8 such as: 1) measuring voter accessibility for voters with language assistance needs; 2) analyzing the patterns and underlying causes of provisional ballot usage; and 3) in addition to evaluating California polling places, also continuing to observe poll workers from county to county to refine poll worker training guidelines, particularly with regard to accessibility and handling special issues such as provisional ballot usage. We strongly advocate these recommendations be included in the State Plan.

RESPONSE

As was discussed by advisory committee members, some of these measures are difficult to design and implement, especially with limited resources. Nonetheless, the Secretary of State has taken steps to address these issues:

- A statewide assessment of language needs down to the precinct level was recently accomplished in collaboration with the UC Berkeley Institute for Governmental Studies.
- Information on provisional voting ballot use is being gathered through the EAC Election Day Survey and is available on the Secretary of State's website at www.sos.ca.gov/elections/nvra/ca-biennial-report-to-eac.htm.
- New standards for poll worker training were created.
- Allowable HAVA funding was provided to the CACEO to fund CalPEAC training classes
- Election Day and poll worker training observation programs were conducted
- New guidelines on physical access to polling places were issued in 2010.

- Funding for elections officials to be trained on those standards was awarded.
- Money was provided to counties over the past four years for training, surveying and mitigation of inaccessible polling places through grant programs over the last four years.

(END OF COMMENTS)

I appreciate the opportunity to review the final draft and present comments. Please feel free to contact me at (213) 252-4552 if you would like to discuss any of these recommendations in greater detail.

Sincerely,

Kathay Feng
Executive Director
California Common Cause