

Attachment A to 2010 State Plan update

Responses to Comments Received on the Help America Vote Act of 2002 (HAVA) 2010 State Plan update

From: *Los Angeles County Registrar-Recorder/County Clerk Dean Logan*

July 8, 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:

Thank you for the opportunity to review and provide written comments on the final draft of California's 2010 State Plan Update regarding compliance with the Help America Vote Act (HAVA) of 2002. I recognize a great deal of effort has gone into the drafting of the plan update and that its contents are influenced by changing dynamics in the state's economic conditions and electoral activity. I appreciate the efforts your staff has extended in preparing the update.

I have reviewed the final draft with elections staff in Los Angeles County and in my capacity as a member of the HAVA State Plan Advisory Committee and offer the following comments for your consideration prior to adoption of the update and submission to the United States Elections Assistance Commission (EAC).

General Comment

In general, I believe the report is presented in a manner more directed toward a report of past activity and less as a planning document or tool for current and future direction in terms of continued improvement of the election process and allocation of remaining – and future – federally appropriated funding. The update is effective and comprehensive in the former and limited in the latter. This distinction was the topic of considerable discussion at the meetings of the HAVA State Plan Advisory Committee. I would recommend, therefore, that the transcripts from those meetings be included as addendum to the State Plan Update to serve as a more complete record of the input and activity of advisory committee members.

RESPONSE

The HAVA 2010 State Plan update must be submitted to the U.S. Election Assistance Commission (EAC) for publication in the *Federal Register*. HAVA Section 254 (a)(13) requires the Secretary to describe the advisory committee process as a part of its State Plan, which is included in this State Plan update as Section 13. The transcripts from the meetings are hundreds of pages long, and including them will add unnecessary expense to the cost of publishing the State Plan update in the *Federal Register*. However, to ensure the is as transparent as possible, the Secretary of State will post the transcripts from the meetings on the

“HAVA State Plan 2010 Update” webpage at www.sos.ca.gov/elections/hava/state-plan/ so everyone will have easy access to them.

Cost Summary

While the update, in various sections throughout the draft, references costs incurred and, in some cases, projections of future costs, it is recommended that Section 6 or an addendum to the update provide a cost summary that more clearly reports on allocation of HAVA funding to date and delineates a plan for the allocation of remaining – and future – federally appropriated funding. In its current form, the update seems disproportionate in its specificity with regard to future HAVA expenditures with priority reference made to the funding needs of the VoteCal project, but minimal reference to the manner in which remaining funding may be allocated and/or approved for county-initiated compliance efforts. This is of considerable importance to Los Angeles County with regard to preserving funding previously allocated to the County for voting system replacement/modernization efforts. As a planning document, I would recommend language that clearly states the intent to preserve unspent funding allocations where counties have an identified and ongoing process in place to acquire or develop compliant voting systems.

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 Los Angeles County, and other 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 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.

Local Government Grant Program

In this same realm, members of the HAVA State Plan Advisory Committee offered recommendations for the establishment of a Local Government Grant Program as a means of funding local initiatives and programs linked to the goals and principles articulated in the Introduction Section of the update. The proposal was modeled after similar programs in place in Washington and Florida. Such a program would enhance the nature of the update as a planning tool and would provide both incentive and clarity to counties in continuing efforts to improve the elections process in compliance with the Act.

RESPONSE

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 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.

Under 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 or 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 not budgeted through another program outside the scope of 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 to 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.

Voter Education and Pollworker Training Funding

Likewise, with regard to references made in the update to the EAC's guidance memorandum regarding allocation of HAVA funding for voter education and poll worker training, I urge you to take caution in how that reference is presented in the final update. As has been previously discussed, EAC guidance on such matters should remain open to interpretation and clarification. Memorializing agreement with or acquiescence to that guidance in the update may have a limiting effect that is counter to the best interests of the State and counties in the allocation of funding for activities many feel clearly fit within the structure and intent of the Act. As you know, counties were previously advised that there would be ongoing funding for HAVA related voter education and poll worker training programs and had planned operations as such and, in several cases, incurred significant costs based on approved spending plans submitted to your office.

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 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 of the Plan states 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 California Association of Clerks and Election Officials (CACEO) CalPEAC election officials training classes which address HAVA implementation and have taken place during the life of prior versions of the State Plan.

Recognizing the value of the efforts outside of the Election Academy idea that are listed on page 43, the implementation of the Election Academy – or something 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. As a planning tool, I recommend the document recommit to this purpose.

RESPONSE

This issue is also subject to the limitations 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.

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.

Repeated Elements

Respecting the need for the update to be comprehensive in its treatment of each of the 13 sections, many elements are repeated several times, contributing to the length of the document. As a result, from a transparency and public information perspective, the repetition may make the update more complicated than necessary for readers. There may be an opportunity to make the document more approachable by using references to elements instead of repeating them verbatim. For example, there is language regarding the Statewide Voter Registration Database and the Top-to-Bottom Review that is repeated in multiple sections. The suggestion is that those elements – when they are subsequently duplications of the same information – be noted by reference rather than repeated.

RESPONSE

HAVA is a complex measure and the steps taken to implement HAVA's 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.

(END OF COMMENTS)

Again, I thank you for the opportunity to review the final draft and present comments. I appreciate the extensive efforts of your staff and their responsiveness to inquiries made throughout the process on behalf of Los Angeles County and the HAVA State Plan Advisory Committee.

Please feel free to contact me if you would like to discuss any of these recommendations in greater detail.

Sincerely,
DEAN C. LOGAN
Registrar-Recorder/County Clerk