of votes cast at a place other than the voter's precinct; (q) Provision for voting absentee; (r) State tracking of the date of all ballots cast before election day; (s) Provision for mail-in voting in place of at-the-precinct voting; (t) Acceptance or rejection of provisional ballots of voters registered in a different precinct; (u) State process for capturing over-votes and under-votes. States and territories that submitted a Statutory Overview for 2008 will be asked to provide updates to the information above, where applicable.

Needs and Uses: The EAC issues the survey to meet its obligations under the Help America Vote Act to serve as national clearinghouse and resource for the compilation of information with respect to the administration of Federal elections; to fulfill its data collection requirements under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); and meet its National Voter Registration Act (NVRA) mandate to collect information from states concerning the impact of that statute on the administration of Federal Elections. The Help America Vote Act of 2002 (HAVA) (42 U.S.C. 15322) requires the EAC to serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal Elections. This includes the obligation to study and report on election activities, practices, policies, and procedures, including methods of voter registration, methods of conducting provisional voting, poll worker recruitment and training, and such other matters as the Commission determines are appropriate. In addition, under the National Voter Registration Act (NVRA), the EAC is responsible for collecting information and reporting, biennially, to the United States Congress on the impact of that statute. The information the States are required to submit to the EAC for purposes of the NVRA report are found under Title 11 of the Code of Federal Regulations. States that respond to questions in this survey concerning voter registration related matters will meet their NVRA reporting requirements under 42 U.S.C. 1973gg-7 and EAC regulations. Finally, the Uniformed and Overseas Citizens Absentee Voters Act (UOCAVA) mandates that EAC create a standardized format for state reporting of UOCAVA voting information (42 U.S.C. 1973ff-1). Additionally, UOCAVA requires that ''not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such a report available to the general public.'' States that complete and timely submit the UOCAVA section of the survey to the EAC will fulfill their UOCAVA reporting requirement under 42 U.S.C. 1973ff-1(c). In order to fulfill the above requirements, the EAC is seeking information relating to the period from the Federal general election day 2008 +1 through the November 2010 Federal general election.

Affected Public (Respondents): State governments, the District of Columbia, Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

Affected Public: State government.

Number of Respondents: 55.

Responses per Respondent: 1.

Estimated Burden per Response: 147 hours.

Estimated Total Annual Burden Hours: 8,085 hours.

Frequency: Biennially.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. E9–21592 Filed 9–4–09; 8:45 am]

BILLING CODE 6820–KF–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to the Help America Vote Act (HAVA), the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA State plans previously submitted by Maryland, Nebraska, and New Mexico.

DATES: This notice is effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual State at the address listed below.

SUPPLEMENTARY INFORMATION:

On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is the first revision to the State plan for New Mexico, and the second revision to the State plans for Maryland and Nebraska.

The revised State plans from Maryland, Nebraska, and New Mexico provide information on program accomplishments and address changes in the respective budgets to account for the use of Fiscal Year 2008 and 2009 requirements payments. In accordance with HAVA section 254(a)(12), all the State plans submitted for publication provide information on how the respective State succeeded in carrying out its previous State plan. The States all confirm that these changes to their respective State plans were developed and submitted to public comment in accordance with HAVA sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from September 8, 2009, the State is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA section 254(a)(11)(C).

EAC wishes to acknowledge the effort that went into revising this State plan and encourages further public comment, in writing, to the State election official listed below.

Chief State Election Officials

Ms. Linda Lamone, Administrator, Maryland State Board of Elections, 151 West Street, Suite 200, Annapolis, Maryland 21401–0486, *Phone:* (410) 269–2840.

The Honorable John Gale, Nebraska Secretary of State, P.O. Box 94608; State Capitol, Suite 2300; Lincoln, Nebraska 68509–4608, *Phone:* (402) 471–2554, *Fax:* (402) 471–3237.

The Honorable Mary Herrera, New Mexico Secretary of State, 3285 Don Gaspar, Suite 300, Santa Fe, New Mexico 87503, *Phone:* (505) 827–3600, *Fax:* (505) 827–8081.

Thank you for your interest in improving the voting process in America.

Dated: August 31, 2009.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–P

INTRODUCTION BY THE GOVERNOR OF MARYLAND

STATE OF MARYLAND
OFFICE OF THE GOVERNOR

MARTIN O'MALLEY
GOVERNOR

STATE HOUSE
100 STATE CIRCLE
ANNAPOLIS, MARYLAND 21401-1925
410-974-3901
TOLL FREE: 1-800-811-8336

TTY USERS CALL VIA MD RELAY

August 10, 2009

U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, DC 20005

Dear Commissioners:

I am pleased to submit a revised Maryland State Plan that reflects the current state of election reform in the State of Maryland. This plan demonstrates how the State complies with the requirements of the federal Help America Vote Act of 2002 and the State's commitment to improvement in election administration.

The recent revisions to the State Plan reflect the State's movement towards statewide implementation of a paper-based, optical scan voting system for the 2010 elections and the possibility of full funding by the United States Congress. Although it is not known whether the U.S. Congress will fully fund the Help America Vote Act, the State of Maryland stands ready to implement additional improvements to election administration if the federal funds become available.

Lastly, I would like to thank the individuals who serve on the State Plan Committee and who reviewed and updated the State Plan. These individuals represent State and local election officials, county government officials, and advocates who have an interest in elections and are dedicated to improving election administration for Maryland's voters.

If you would like to learn more about elections in Maryland, please visit the State Board of Elections' website at www.elections.state.md.us or call 1-800-222-8683.

Sincerely,

Martin O'Malley
Governor

STATE PLAN REQUIRED ELEMENTS (HAVA §254)

1. Title III Requirements and Other Activities

How the State will use the requirements payment to meet the requirements of title III, and, if applicable under section 251(b)(2), to carry out other activities to improve the administration of elections. -- HAVA §254 (a)(1)

1.A. §301(a), Voting Systems Standards Requirements

Deadline for Compliance: January 1, 2006; no waiver permitted.

When the initial State Plan was adopted, the State used four polling place voting systems in its 24 jurisdictions, including two optical scan systems (ES+S Optech III-P Eagle and Diebold Model ES-2000) and two Direct Recording Electronic (DRE) systems (Diebold AccuVote TS and Sequoia AVC Advantage). In addition, the State used four optical scan voting systems for absentee balloting (ES+S Optech III-P Eagle, ES+S Optech IV-C, ES+S Model 315, and Diebold Model ES-2000).

Before the passage of HAVA, the State enacted legislation mandating that, by 2006, all jurisdictions implement a uniform voting system for polling places and a uniform voting system for absentee voting. *See* Chapter 564 of the 2001 Acts of Maryland. SBE began to implement this new legislation in 2001. Because SBE closely tracked innovations in voting as well as the developing federal election reform legislation, the polling place voting system selected in 2001 was compliant with the HAVA requirements that were introduced a year later.

The voting system selected as the statewide voting system for polling place voting enables a voter to correct ballot errors before casting a ballot. The system also prevents a voter from over-voting, provides for accessibility for individuals with disabilities, and allows for alternative language accessibility.

In 2002, four of the State's 24 jurisdictions, comprising approximately 32% of its registered voters, implemented the uniform State and HAVA-compliant, DRE voting system (AccuVote TS) for polling place voting and the uniform State absentee voting equipment (Model ES-2000). For the 2004 elections, nineteen counties implemented the uniform State voting systems, and in 2006, the remaining jurisdiction – Baltimore City – implemented the system. By the January 1, 2006, deadline established by HAVA, all 24 jurisdictions had a HAVA-compliant voting system.

In 2007, legislation was enacted requiring that the State's voting system include a voter verifiable paper trail, comply with the Americans with Disabilities Act, and meet the accessibility standards adopted as part of the Voluntary Voting System Guidelines. *See* Chapters 547 and 548 of the 2007 Acts of Maryland. Because of how "voter verifiable paper trail" was defined, this law requires the implementation of an optical scan voting system for polling place voting. Since the State's current voting system does not meet the requirements of the Chapters 547 and 548, the State will be implementing a new voting system for polling place voting for the 2010 elections.

Because of the uncertainty about whether any voting systems currently on the market meet the requirements of Chapters 547 and 548 of the 2007 Legislative Session, legislation was enacted in the 2009 Legislative Session that permits the State to implement an optical scan voting system and use at least one DRE voting unit in each

polling place to accommodate voters with disabilities. *See* Chapter 428 of the 2009 Legislative Session. The DRE voting system can be used for polling place voting until a voting machine meets the accessibility requirements of Chapters 547 and 548 of the 2007 Legislative Session and State certification requirements and is compatible with the State's optical scan voting system for polling place voting.

In addition to numerous voting system requirements, §301(a) also requires states to define what constitutes a legal vote for each type of voting system used in the state. Prior to the passage of HAVA, the State defined, in the 2002 Standardized Election Recount Procedures for Optical Scan Automatically Tabulated Systems, what constitutes a legal vote in the case of a manual recount for optical scan ballots. Subsequently, the State defined a legal vote in a uniform manner for each voting system as a regulation in Title 33 of the Code of Maryland Regulations (COMAR).

Uniform State Voting Systems Program Milestones

As demonstrated in the above description of the current state of voting systems, the State is in compliance with HAVA §301(a) requirements. The State is currently in the procurement and planning stages of implementing the voting system required by Chapters 547 and 548 of the 2007 Legislative Session and Chapter 428 of the 2009 Legislative Session and will ensure that the selected voting system will be compliant with HAVA §301(a) requirements.

1) Planning voting system compliance
    - Assess procurement options
    - Establish user group of relevant internal stakeholders to discuss implementation, lessons learned from prior voting system implementations, and guide the voting system program through planning, managing, and implementing phases
    - Create schedules, milestones, and work plans
2) Managing the implementation effort through a standardized project management framework
    - Develop reporting structures and performance measures to track progress
    - Track issues and risks to ensure smooth transition to new uniform voting systems
3) Implementing compliant voting systems
    - Procure equipment and services pursuant to the State's procurement law
    - Deliver equipment and services to all 24 jurisdictions
    - Ensure proper training and change management for stakeholders using new uniform systems
4) Operating & Maintaining new uniform State voting systems
    - Maintain and improve voting system software
    - Maintain technical infrastructure for software

The matrix on the following pages outlines the HAVA §301(a) requirements and the "State of Maryland's Current Status" and the "State of Maryland's Status with the New Voting System" related to these requirements. As the matrix indicates, all 24 jurisdictions are currently compliant with HAVA and will continue to be compliant with the implementation of the optical scan voting system for the 2010 elections.

Requirement	State of Maryland's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	State of Maryland's Status with New Voting System (Will Meet Requirement, Will Partially Meet, Will Not Meet)
SEC. 301. VOTING SYSTEMS STANDARDS		
(a) REQUIREMENTS- Each voting system used in an election for Federal office shall meet the following requirements		
(1) IN GENERAL-		
(A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall		
(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;	Meets.	Will meet. The voter will be able to verify his or her selections either on the review screen of the DRE voting unit or by reviewing the paper ballot.
(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and	Meets.	Will meet. On the DRE voting unit, the voter can change any selection or correct an error at any time before pressing the "cast ballot" button. A pollworker can issue a voter a replacement ballot if the voter using a paper ballot needs to change a selection or correct an error.
(iii) if the voter selects votes for more than one candidate for a single office-- (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot; (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.	Meets.	Will meet. The DRE voting unit prevents a voter from making more selections than permitted for that contest. The optical scan voting unit will return a ballot if one or more contests have more selections than permitted, and a pollworker will offer the voter another ballot.

Requirement	State of Maryland's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	State of Maryland's Status with New Voting System (Will Meet Requirement, Will Partially Meet, Will Not Meet)
(B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by		
(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and	Meets.	Will meet. This information will be included in the voter education program to educate Maryland voters about the new voting system.
(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error)	Meets.	Will meet. This information will be included in the voter education program and on instructions on the ballot and in the polling place.
(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.	Meets.	Will meet. Notification on the DRE voting unit preserves the privacy of the voter and the confidentiality of the voter. For voters using the optical scan voting system, pollworkers will be instructed to provide notice in a manner that preserves the privacy of the voter and the confidentiality of the ballot.
(2) AUDIT CAPACITY-		
(A) IN GENERAL- The voting system shall produce a record with an audit capacity for such system.	Meets.	Will meet. Both systems meet this requirement.
(B) MANUAL AUDIT CAPACITY-		
(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.	Meets.	Will meet. Both systems meet this requirement.
(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.	Meets.	Will meet. Both systems meet this requirement.

Requirement	State of Maryland's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	State of Maryland's Status with New Voting System (Will Meet Requirement, Will Partially Meet, Will Not Meet)
(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.	Meets.	Will meet. Both systems meet this requirement.
(3) ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES- The voting system shall-		
(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;	Meets.	Will meet. The DRE voting unit meets these requirements. When a voting unit that meets the accessibility requirements of State law is available, the unit will also meet these requirements.
(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and	Meets.	Will meet. There will be at leaset one DRE voting unit in each polling place. When a voting unit that meets the accessibility requirements of State law is available, there will be at least one unit in each polling place. .
(C) if purchased with funds made available under title II on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).	N/A because the State's current voting system was purchased before January 1, 2007	N/A because the new voting system being implemented for the 2010 elections will not be purchased with federal funds. State and county funds will be used to purchase the new system.
(4) ALTERNATIVE LANGUAGE ACCESSIBILITY- The voting system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a).	Meets.	Will meet. The DRE voting unit is capable to providing bilingual ballots in those jurisdictions submit to the section 203 of the Voting Rights Act. Bilingual paper ballots will also be provided in those jurisdictions.

Requirement		State of Maryland's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	State of Maryland's Status with New Voting System (Will Meet Requirement, Will Partially Meet, Will Not Meet)
	(5) ERROR RATES- The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.	Meets.	Will meet. Both systems will meet this requirement.
	(6) UNIFORM DEFINITION OF WHAT CONSTITUTES A VOTE- Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.	Meets.	No action needed as current regulations already define what constitutes a vote on a DRE voting unit and on a paper ballot.

6. Maryland's HAVA Budget

The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on –

(A) the costs of the activities required to be carried out to meet the requirements of title III;

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) *the portion of the requirements payment, which will be used to carry out other activities. -- HAVA §254 (a)(6)*

Table 6.1 outlines the federal funds authorized to the State for HAVA activities. These figures are the basis for the HAVA budget in Table 6.3.

Table 6.1: Authorized Federal Funds

in millions

Federal Fiscal Year	Total Federal Funds	Maryland Share	5% State Match Requirement*
Early Payments	$650	$7.27	n/a
2003	$1,400	$15.20	$0.80
2004	$1,000	$27.28	$1.44
2005	$600	$11.16	$0.59
2008	$115	$2.08	$0.11
2009	$100	$1.81	$0.10
Total	**$3,865**	**$64.80**	**$3.04**

*5% State Match Requirement is calculated as 5% of the total of the State Match portion plus the federal requirements payment portion of cost. To determine the 5% State Match based on federal requirements payment amount, use .0526 as the multiplier (i.e., 5/95 ~ 0.0526). Example from Maryland FY 2003: $15.20M x 0.0526 = $0.8M

HAVA originally authorized funding for three fiscal years (2003-2005). Because there was no appropriation in fiscal year 2005, the U.S. Congress appropriated funding in fiscal years 2008 and 2009 in an effort to move toward the full funding of HAVA. It is unlikely that Maryland will receive the full $64.80 million shown in Table 6.1, as appropriations after fiscal year 2005 will not likely exceed the fiscal year 2005 appropriation for requirements payments. If HAVA is funded at the level established by HAVA, Maryland's share of the requirements payments would equal $53.64 million or the Maryland's total share of all payments would equal $60.91 million. The State's 5% match would be $2.83 million.

Table 2 shows the amount of federal funds appropriated to Maryland for HAVA activities.

Table 6.2: Appropriated Federal Funds

in millions

Federal Fiscal Year	Total Federal Funds	Maryland Share	5% State Match Requirement*
Early Payments	$650	$7.27	n/a
2003	$830	$15.20	$0.80
2004	$1,489	$27.28	$1.44
2005	$0	$0	$0
2008	$115	$2.08	$0.11
2009	$100	$1.81	$0.10
Total	**$3,184**	**$53.64**	**$2.45**

*5% State Match Requirement is calculated as 5% of the total of the State Match portion plus the federal requirements payment portion of cost. To determine the 5% State Match based on federal requirements payment amount, use .0526 as the multiplier (i.e., 5/95 ~ 0.0526). Example from Maryland FY 2003: $15.20M x 0.0526 = $0.8M

Based on the amount of federal funds appropriated, the State HAVA budget represents the activities to implement and conduct operations and maintenance for the HAVA Title III requirements and other activities to improve the administration of elections in Maryland. The budget will continue to be monitored and revised, when necessary, to reflect any material changes. The State's budget to carry out activities to meet HAVA requirements is provided in table 6.3.

Table 6.3: Maryland's Budget for HAVA Activities

HAVA Requirements	HAVA Funding Source (note 1)			
	§ 101 (note 2)	§ 102	§ 252	Total
TITLE III Requirements				
§ 301 Voting Systems (note 3)	$1,000,000	$1,637,609	$31,150,865	$33,788,474
§ 302 Provisional Voting & Voting Info Requirements	$0	-	$203,500	$203,500
§ 303 Statewide Voter Registration List (note 4)	$2,000,000	-	$13,358,430	$15,358,430
Other Election Reform Activities				
§ 254(3) Education: Voter, Election Officials, Pollworkers	$1,675,000	-	$0	$1,675,000
§ 402 Administrative Complaint Procedures	$5,000	-	$0	$5,000
Election Reform Program (note 5)	$12,703,869	-		$12,703,869
GRAND TOTAL HAVA	**$17,383,869**	**$1,637,609**	**$44,712,795**	**$63,734,273**

Notes:

1. Based on the amount of federal funding originally authorized in HAVA and the State's 5% state match. Maryland's share of the original authorizations is $53.64 million. The amount of federal funds authorized by HAVA by fiscal year is provided in table 6.1.
2. On May 15, 2007, the State of Maryland certified that all of the Title III requirements had been met. As a result, the State can use all remaining and any future requirements payments to fund other activities to improve election administration. For the purposes of this budget, the requirements payments initially authorized for fiscal year 2005 and appropriated in subsequent fiscal years are shown in this column, since these funds – when received – can be used for any purpose authorized by § 101.
3. In 2001, Maryland implemented a HAVA-compliant statewide voting system in four counties. Included in the cost of the voting systems is $13.8 M that the State already expended in those four counties for implementation and operation of the compliant voting system.
4. Section 101 funds allocated to the voter registration system include: (1) funds to develop an interface between the statewide voter registration system and the Maryland Motor Vehicle Administration (MVA) to decrease the number of individuals who have a transaction at MVA but whose information is not received by election officials; (2) develop and implement on-line voter registration; (3) develop and implement an interface between the statewide voter registration system and an in-house election management system to combine multiple polling place databases; and (4) other enhancements to the statewide voter registration system.
5. Projects included in the Election Reform Program include: (1) development, maintenance, and enhancements (including on-line delivery of absentee ballots) to voter-look-up on website; (2) enhanced election night reporting; (3) project management office, including personnel to conduct business process reviews and assist with training and corrective actions and election-related audits according to the pilot audit program developed by SBE with a grant from the Pew Charitable Trust's Make Voting Work Project; (4) data entry center to process voter registration applications submitted immediately prior to the voter registration deadline; (5) an absentee ballot tracking system; (6) salaries and associated benefits for personnel; and (7) expenditures concerning election-related equipment.

12. Changes to State Plan

In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year. -- HAVA §254 (a) (12)

The inaugural State Plan was amended in 2005 to reflect the actual amount of funds received to implement the requirements of HAVA and the actual costs of major contracts to comply with the Act. Amendments to the State Plan were made in Sections 6, 10, 12, and 13.

The State Plan amended in 2005 was amended again in 2009. The 2005 version was amended to reflect the amount of funds authorized under the HAVA and to reflect the anticipated implementation of a HAVA-compliant voting system (funded exclusively by State and county funds) for the 2010 elections. Amendments to the State Plan were made in Sections 1A, 6, 12, and 13.

Since the submission of the amended State Plan, the State of Maryland has:

1. Implemented a HAVA-compliant voting system in all 24 jurisdictions for the 2006 elections. Four jurisdictions implemented the system in 2002, nineteen counties implemented in 2004, and the remaining jurisdiction – Baltimore City – implemented the system by January 1, 2006.

2. Administered four statewide elections and seven special elections using the State regulations that define what constitutes a vote and what will be counted as a vote for each voting system used in Maryland. *See* Code of Maryland Regulations 33.08.02.

3. Continued provisional voting based on the standards required by HAVA and provided a "free access system" for each statewide election and five special elections. In the 2008 General Election, over 51,000 individuals voted by provisional ballot, and over 34,000 voters had their provisional ballots counted.

4. Printed, distributed, and mandated posting of voting information in every precinct in Maryland. This information included instructions on how to vote, identification requirements for certain voters, and general information about voting rights and federal and State laws prohibiting acts of fraud and misrepresentation.

5. Implemented by January 1, 2006, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level. The HAVA-compliant system has been successfully used in four statewide elections, seven special elections, and numerous municipal elections. Enhancements and modifications continue to improve its usability.

6. Reviewed regulations requiring first-time voters who registered to vote by mail to satisfy the identification requirement established by HAVA. *See* Code of Maryland Regulations 33.07.06.

7. Updated and distributed State's pollworkers' manual, initially developed by a professional graphic design firm. The manual incorporates graphic design principles that foster learning by adults. The new manual was initially used in the 2006 elections and was updated for use in the 2008 elections. Other forms were also redesigned, using the same principles.

8. Developed and distributed a statewide pollworkers' training curriculum and instructor's guide for use in all jurisdictions for the 2006 and 2008 elections. The State conducted train-the-trainer sessions for the individuals who conduct pollworkers' training for the local boards of elections.

9. Reviewed and proposed amendments to the regulations establishing a State-based administrative complaint procedure. *See* Code of Maryland Regulations 33.01.05. After conducting several hearings under this procedure, several shortcomings in the regulations were identified, and the amendments addressed these shortcomings. The amendments included:
    a. Expanding the window (from 10 days to 20 days) during which a hearing must be conducted;
    b. Limiting witnesses to those individuals called by either the complainant or respondent;
    c. Requiring parties to provide the hearing officer and other party a list of the witnesses each party intends to call and documents or other evidence the parties intend to present at the hearing;
    d. Permitting the hearing officer to question witnesses and, with the consent of all parties, extend any deadline or waive or modify any requirement not specified by law;
    e. Clarifying that a determination is not provided at the end of the hearing; and
    f. Permitting the hearing officer to take judicial notice of certain facts.

    These amendments were adopted under the State's Administrative Procedures Act and were effective as of March 9, 2009.

13. State Plan Development and Committee

A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section 255 and section 256. -- HAVA §254 (a)(13)

The State's committee consists of individuals representing a cross-section of election stakeholders. The State Plan Committee was selected by the chief State election official, Linda Lamone, State Administrator for SBE.

The original Members of the State Plan Committee, and the primary qualification of each for being a committee member, are as follows:

- Linda Lamone, State Administrator, State Board of Elections;
- William E. Anderson, Department of Aging ADA Coordinator, Anne Arundel County;
- Jacqueline McDaniel, Baltimore County Election Director;
- Margaret Jurgensen, Montgomery County Election Director;
- Robin Downs Colbert, Prince George's County Election Director;
- Linda Pierson, League of Women Voters;
- Michael Sanderson, representative of Maryland Association of Counties (MACo);
- James McCarthy, representative of National Federation of the Blind; and
- Kibbe Turner, Registered Voter.

In creating the State Plan, the State Plan Committee worked with Accenture, a project management vendor. The vendor was contracted to facilitate working sessions and to offer a fair and balanced assessment regarding the impact of HAVA requirements and proposed compliance steps. Based on an objective analysis of the State's current status, this State Plan highlights necessary adjustments and potential next steps in Maryland's election reform process.

The State Plan Committee will comply with the requirements of §255 and §256 of HAVA.

The Preliminary State Plan was published on the Maryland State Board of Elections' website, following a public notice in the Maryland Register. The Preliminary Plan was available for 30 days of public comment, as required by HAVA. The State Plan submitted to the Election Assistance Commission for publication in the Federal Register incorporated the feedback from the 30-day period. The State Plan was published in the Federal Register on March 24, 2004, for a 45-day public comment period.

The State Plan Committee reconvened in October 2005 to review the State's HAVA activities and revise the HAVA budget to reflect the federal funds received and the known costs of implementing HAVA activities. Notice of the revisions and the opportunity for public comment was published in Volume 32, Issue 25 of the *Maryland Register* (December 9, 2005). Public comment was received and considered by the State Plan Committee, and the revised State Plan was submitted to the U.S. Election Assistance Commission on January 26, 2006, for publication in the *Federal Register*. Notice of the revised State Plan was published in Volume 71, No. 38 of the *Federal Register* (February 27, 2006). The revised State Plan became effective March 30, 2006.

The membership of the State Plan Committee was updated to reflect change in personnel at two local boards of elections, removal of a member who moved out of state, and removal of another member who no longer serves in his prior capacity. The members of the State Plan Committee that reviewed the 2009 revisions to the State Plan are:

- Linda Lamone, State Administrator, State Board of Elections;
- Tracy Dickerson, Charles County Election Director;
- Margaret Jurgensen, Montgomery County Election Director;
- Alisha Alexander, Prince George's County Election Director;
- Linda Pierson, League of Women Voters;
- Michael Sanderson, representative of Maryland Association of Counties (MACo); and
- James McCarthy, representative of National Federation of the Blind.

The State Plan Committee reconvened to review the State's HAVA activities and update the State Plan to reflect the federal funds appropriated and the anticipated implementation of a HAVA-compliant voting system (funded exclusively by State and county funds). Notice of the revisions and the opportunity for public comment was published in Volume 36, Issue 13 (June 19, 2009) and Volume 36, Issue 14 (July 6, 2009) of the *Maryland Register*. No public comment was received. The revised sections of the State Plan were submitted to the U.S. Election Assistance Commission on August 25, 2009, for publication in the *Federal Register*.

Help America Vote Act

John A. Gale
Secretary of State

State of Nebraska
Amended State Plan

July 1, 2009

John A. Gale
Secretary of State
State of Nebraska

Help America Vote Act of 2002 (HAVA)
State Plan (with 2009 Amendments)

TABLE OF CONTENTS

A Message from Secretary of State John Gale 2
Executive Summary 4
Introduction 7
Section 1 7
Section 2 9
Section 3 10
Section 4 12
Section 5 17
Section 6 17
Section 7 20
Section 8 20
Section 9 24
Section 10 25
Section 11 25
Section 12 26
Section 13 27

A Message from Secretary of State John Gale

In October of 2002, Congress passed and President George Bush signed the Help America Vote Act. This Act was the beginning point in a new era of election administration in the United States.

The Act is uniquely American: it contains federal mandates to the states, but it doesn't federalize the system; it provides funding to the states, but the funding is not entirely just federal money due to the match requirement; the Act requires reporting and accounting but generally relies on the State Election Officers to carry out the goals of the Act in cooperation with local authorities.

In February 2003, the U.S. Congress in its Omnibus Appropriations bill included some $1.5 billion to begin funding the reforms mandated under HAVA. In order to access its share, each State created a State Plan Commission, which was to be broad-based, inclusive, and provided a voice for the various groups of citizens who expressed concerns that their communities had not been well served. Individuals from the visually impaired and physically handicapped communities particularly come to mind.

This has truly been an historic task. For the past century, the battle that has been fought has been over the issue of *who* shall vote. When our nation was founded, only white male adult landowners could vote. We have come a long way. The struggles to outlaw slavery and enfranchise blacks as citizens, to allow women to vote, and to reduce the voting age to 18 to give our youth a voice in their democracy, were tremendous struggles, finally leading to the Voting Rights Act of 1965, and the Civil Rights Act of 1974.

They were battles over inclusiveness in our democracy.

In 2001, the struggle shifted to issues of the fairness of the election system and the machinery of elections…the process of registering voters, casting ballots, and counting votes. What each State Commission did to implement HAVA became historic and a part of the dynamic of changing the face of elections in America.

For the first time in 100 years, we had an opportunity to review and make significant improvements in our election systems. It was time to invest some money where our ballot boxes are. These federal dollars helped strengthen our elections process by improving access at the polls,

increasing our technology levels, and helping us educate and train voters and poll workers alike.

The responsibility placed by the Federal government onto state election officials has been taken very seriously. The U.S. Congress allocated unprecedented levels of funding to improve the machinery of elections nationwide, in order to accomplish a new level of fairness, reliability and inclusiveness, nearly uniform across the country. I approached this task as a clear mission delegated to my office, which we would not fail. We used the funds wisely and met the goals squarely. A new form of relationship between state and local election officials was paired with a new level of cooperation that maintained the fair and uniform election process that Nebraska has developed while effectively and efficiently developing processes to encourage every eligible citizen to participate in our system of democracy.

The first step on this journey was the appointment of the State Plan Commission members. I convey my warmest thanks to those members who have participated in the process. The long days and numerous hours spent discussing the intricacies of election administration have been invaluable in the preparation of this Plan and its amendments. I would be remiss if I did not acknowledge the efforts of Ms. Martha Gadberry, who as facilitator of the Commission meetings, has been successful in getting the group to function not only as advocates for their particular constituency, but as a team working together to improve the election process.

The original Plan was intended to be treated as a living document. It served as a changing road map to track not only the successes but also the failed initiatives along the way. To that end, everyone's input was welcomed, not only during the 30- day comment period mandated by the Act, but at any time that this path has been traveled. Please don't hesitate to contact my office with comments, suggestions or criticisms. Help us to make our democratic system be the best it can be to serve America.

With Best Wishes,

John A. Gale
Secretary of State
State of Nebraska

Executive Summary

The Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15301-15545 ("HAVA") following passage by the U.S. Congress was signed into law by the President of the United States George Bush on October 29, 2002. This legislation marked a significant step toward major change in our election systems nationwide. Each participating state is required to appoint a citizen advisory committee to advise the Chief Election Officer in the development of a State Plan to implement HAVA, which Plan is to be available for public comment and input before adoption.

Secretary of State John A. Gale, Chief Election Officer for the State of Nebraska, appointed a sixteen-member citizen advisory commission on February 28, 2003, to help in the development of the State Plan. The Commission is called the Nebraska State Plan Commission. Members include the election officials from Nebraska's two largest counties, a mid-size county election official, a former President of the Nebraska County Clerks Association, a representative from the Secretary of State's office and representatives from various advocacy organizations including the disabled community. Secretary Gale took recommendations for these appointments so that the Commission is representative of a wide cross-section of Nebraskans, including those with disabilities and minority designation.

In addition to the role played by Secretary of State Gale and the State Plan Commission, the public has an opportunity for input in the process. In accordance with the Act, there will be a 30 day comment period, and those comments will be considered prior to publication of the plan-- or any amendments to the plan-- in the Federal Register. Written comments may be submitted either through the web site www.sos.state.ne.us/election/HAVA, which contains details of Nebraska's efforts under the Help America Vote Act or by writing to the Secretary of State.

The State Plan has as its' foundation several basic principles that were adhered to in the drafting. These principles include:

> Nebraska's Plan should comply with all federal requirements in the Help America Vote Act of 2002 (HAVA).
>
> The plan should not pass initial costs of the implementation of HAVA onto the counties.
>
> Allocation of adequate funds to purchase equipment to implement the central voter registration system, disability voting requirements, and training mandates should be the primary objectives.

The State Plan was amended in 2004 to take into account additional Title III (Requirements Payments) appropriated by Congress. These changes were minor in nature and were described in Section 12. With the appropriation of additional funds in FY 08 and 09, additional amendments are necessary. In addition, because of the passage of time and to indicate progress or completion of various provisions, these amendments are more numerous. While a summary is included in Section 12, many sections have changes; some minor such as tense changes, others more substantive.

The State Plan consists of 13 sections on topics ranging from voter education and outreach to administration and budgeting for the plan. Section 1 describes the use of the Title II funding for the mandates in the Act. Included are descriptions of the mandates contained in Title III such as a centralized voter registration database, provisional voting, voter identification, and changes to the voter registration process. Several of these, provisional voting, voter identification and voter registration form changes, were addressed through state legislation during the 2003 legislative session.

Section 2 addresses how the funding will be distributed to local election officials or others. The proposal in this section calls for a grant program for voter education and outreach efforts. Section 3 addresses the issues surrounding voter and election official education and training. Notable components of this section include creation of a panel to examine voter turnout issues, an increased role for the Secretary of State's office in training local officials, and a more aggressive approach to ensuring that voters with disabilities are accommodated.

Section 4 outlines the requirements for vote tabulation equipment. The section outlines a plan to place a disabled accessible device in each polling site, while maintaining the current central scan and hand count procedures historically used in Nebraska. These processes, coupled with an education effort, may be used to address second chance voting issues; however, federal appropriations in 2004 have allowed for consideration of the use of precinct scan technology, allowing for the creation of a statewide system of optical scan counting through the use of precinct and central scan equipment.

Section 5 describes the fund established to administer the program funding and Section 6 provides a general budget for the implementation effort. Section 7 addresses maintenance of effort requirements of the Act.

Section 8 describes performance measures for the various elements of the State Plan. Section 9 provides a description of the Administrative Complaint Procedure required by the Act.

Section 10 addresses the Title I or "early out" money and its uses. The current Plan anticipates using those funds to supplement the Title II funding to meet the mandates of the Act.

Section 11 addresses the State Plan Commission and how the Plan will be amended in the future. Section 12 contains a description of the changes to the State Plan in this amendment. Section 13 lists the members of the State Plan Commission and their procedures used to develop recommendations for this Plan.

This amended document will be made available for public comment for a thirty day period beginning on June 26, 2009. Any person wishing to comment on the plan may either write the Secretary of State at Suite 2300, State Capitol, Lincoln, Nebraska 68509. Comments may also be made on the website, www.sos.state.ne.us/election/HAVA.

Following the 30 day comment period, any comments will be reviewed and a final version of the State Plan be published in the Federal Register for a 45 day period in late July of 2009.

John A. Gale
Secretary of State
State of Nebraska

Help America Vote Act of 2002 (HAVA)
State Plan (with 2009 Amendments)

Introduction

The following constitutes the 2009 revised State Plan for the implementation of the Help America Vote Act for the State of Nebraska. The federal statute requires addressing thirteen issues within the plan. Each required item is identified by a separate section.

Sec 254. (a) IN GENERAL - The State plan shall contain a description of each of the following:

Section 1

(1) How the State will use the requirements payment to meet the requirements of title III (equipment and administration), and, if applicable under section 251 (a)(2), to carry out other activities to improve the administration of elections.

It is currently estimated that the requirements payment (Title II) to the State of Nebraska will be approximately $4.9 million for federal fiscal year 2003. In addition, Nebraska anticipates an additional $8.8 million for federal fiscal year 2004. At this time it appears necessary that the entire amount of the requirements payment will be dedicated to two of the more expensive mandates contained in Title III: the interactive Voter Registration System (Section 303) and providing a Voting System within each polling site that allows members of the disability community to vote in private and unassisted (Section 301(a)(3). It is also anticipated that at least a portion Title I funds will be necessary to meet these two requirements.

FY 08 and 09 requirement payments total approximately $1.3 million.

The requirements of Title III include the following:

Sec. 301 This section describes the requirements for voting systems used at the polling sites. Details of these requirements are contained in below in Section 4.

Sec. 302 This section describes the requirements for what has been termed provisional voting and other voting information.

Through the 2002 election cycle Nebraska statute (Neb. Rev. Stat. 32-914.01 et seq.) provided for a process where a person who had previously registered to vote, but whose name did not appear on the list of eligible voters, could cast a

ballot through either the use of a "conditional ballot" used to accommodate fail-safe voting under NVRA, or a provisional ballot for someone who had not changed their residence but for some reason their name did not appear on the list.

These provisions did not completely meet the requirements of Sec. 302, as there were no provisions for allowing the individual to ascertain the disposition of the conditional or provisional ballot.

LB 358, introduced and passed in 2003, combines the conditional and provisional processes into one procedure and provides for the development of a website and toll free line to determine whether the provisional ballot was counted and if not, why. This website and toll free line were set up and operational for the May 11, 2004 primary election.

LB 358 also contains requirements that voter information be posted in each polling location including information on polling hours, instructions on how to vote, voting rights, instructions for certain voters that are required to provide identification, and sample ballots. While some of this information had been required to be posted previously, the provisions of LB 358 meet the requirements of Sec. 302. The required voter information was first posted at the May 11, 2004 primary election and has been used at each subsequent election.

Sec. 303 This section describes the requirements for a statewide interactive voter registration database. Among the requirements are that the system utilize driver's license numbers and the last four digits of the social security number or in the alternative assign a unique identifier. Other requirements include coordination with other state agency databases and list maintenance procedures as outlined in the National Voter Registration Act.

While Nebraska had a state voter registration database in place, it did not meet the requirements contained in Sec. 303. The state explored either the modification of the current system or a replacement system that meets the requirements. A Request for Proposals was issued in February of 2004 and an agreement for a compliant system was entered into in June of 2004. The agreement calls for the completion of the system in October of 2005. A substantial amount of Title II monies currently estimated at $4.5 million will be necessary to meet this mandate. See Section 6 (budget information) for additional detail. The deadline for meeting this requirement is January 1, 2004, although a waiver until January 1, 2006 was available and was applied for.

Sec. 303 further requires that various changes be made to the voter registration process including the design of the voter registration form and the confirmation of the last four digits of the social security number. In addition, agreements with the Department of Motor Vehicles and other state databases are required to provide for list maintenance purposes. LB 359, passed and signed during the 2003

legislative session, contained the required changes and mandates the agreements with other state agencies. New voter registration forms were available in September of 2003. Agreements with the Department of Motor Vehicles, the Bureau of Vital Statistics (death notices) and agencies for felony convictions have been developed.

The section also provides that first time voters, who register by mail, are required to produce identification prior to casting a ballot. This mandate was also met in LB 359 and was implemented for the May 2004 primary and subsequent elections.

Section 2

(2) How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of -

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

Should funds be available after meeting voting and registration system mandates, the Secretary of State should develop a grant program to encourage voter participation and education among population groups that historically have not been participating in the voting process, including but not limited to youth, disabled persons and minority populations. Such grants should be limited to non governmental, not for profit organizations serving affected voters. No individual grant should exceed $60,000 per year and preference should be given to organizations that demonstrate an ability to attract other financial resources to maintain programs into the future.

This section has resulted in 3 grants being awarded (1 in the ’06 cycle and 2 in the ’08 cycle). Grants may continue in future cycles if funding is available.

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

Any entity receiving grant monies under (2)(A) will comply with any or all federal reporting requirements. Any entity receiving grant monies under (2)(A) has been required to submit a report to the Secretary of State within 12 months after receiving such a grant, that details the activities funded by the grant and a financial audit.

Section 3

(3) How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.

The Secretary of State's Office understands the importance of education and training to a successful implementation of HAVA reforms in Nebraska.

The Secretary of State will initiate and plan for centralized, uniform training statewide. This may include but is not limited to providing election officials the training standards, including maintenance of current training efforts; a training manual (both electronic and hard copy) regarding the HAVA requirements; a video with basic information about HAVA to inform county clerks and poll workers; and information about increasing diversity of poll workers and election officials. This will be done by using regional networks for training election officials, such as NACO annual meetings and involving the vendor to provide training on specific election equipment. The Secretary of State's Office will also seek opportunities to collaborate with advocacy and community groups in an effort to inform not only election officials, but the general public as well regarding voter accessibility and procedural changes. This includes but is not limited to the grant program described in Section 2.

Currently, elections and election training are handled mainly at the local level. Training on election issues is provided twice yearly to the County Clerks by the Secretary of State's Office. County officials will continue to bear responsibilities to disseminate training materials and conduct training events within the counties to their poll workers. Content of the training will include, but not be limited to, accessibility issues (especially for the physically and visually impaired); identification requirements for certain first time voters as described in HAVA; changes to provisional voting for HAVA compliance; and information on the complaint procedure.

Voters with disabilities should be made aware of the new accessibility requirements and instructed on how to use any new electronic voting equipment. The Secretary of State's office will do this in a variety of ways, which may include but will not limited to, producing a Braille brochure for statewide distribution; making new electronic voting equipment available in places where people with disabilities or the elderly can get hands-on experience; showing new electronic voting equipment in higher education student unions, high schools and nursing homes and assisted-living facilities; coordinating voter education projects with

advocacy and community groups; educating the media through press releases, public access and service announcements; producing video or power point presentations for use by advocacy groups for civic group meetings; improving signage at the polling place to indicate accessibility; and establishing an "Elections Information" website to inform the voters of changes before statewide elections.

County clerks will provide information to the voters regarding the identification requirements for first time voters who register by mail. When students are on college campuses, information on voting place options may be given during orientation activities. College students may also be recruited as poll workers, along with high school students, pursuant to new statutory allowances passed by the Nebraska Legislature.

Training for Election Officials and their staff continues to be an ongoing effort. An annual large group workshop concentrates on federal and state legislative changes, updates to the statewide voter registration database system, reviews on the vote tabulation equipment and new developments in poll worker training. In addition, small group meetings are held regionally across the state to promote open discussion on local problems and concerns. High School poll worker programs and website distribution of outreach materials continues to grow every year. Voting information pamphlets are provided both on-line, in office and distributed to county offices around the state.

The Secretary of State is committed to making voting more attractive and accessible to Nebraska's citizens. Registration forms will be revised to ensure compliance with HAVA reforms and user-friendliness to encourage voter registration. These forms will continue to be distributed in many places, such as the phone book, county clerk visits to high schools, and college voter drives. The Secretary of State will also focus on improving the process of reporting registrations from collaborating agencies, such as Health and Human Services.

Pursuant to LB 569, Nebraska established a Blue Ribbon Panel to monitor the progress of HAVA election reforms. The Vote Nebraska Initiative began meeting in July of 2003 with a report issued in December of 2004.

The Vote Nebraska Initiative report was available on the Secretary of State's website through the 2006 election cycle. At this time, copies may be obtained by contacting the Secretary of State's office.

Section 4

(4) How the State will adopt voting system guidelines and processes which are consistent with the requirements of section 301.

The requirements of section 301 include the following:

Sec. 301 Voting Systems Standards
(a)(1)(A)(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;

Prior to HAVA Nebraska local jurisdictions used one of two methods for tabulating votes: hand counting of paper ballots or a central optical scan system for paper ballots. Either of these two systems met the requirement that permits the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted.

With the selection of the Automark as the platform for accessible voting and the additional funds made available in FY 04, new optical scan units, both precinct level and central were purchased for all counties in FY 06. Both types of equipment permit the voter to verify selections prior to casting the ballot.

(a)(1)(A)(ii) provide the voter with the opportunity to (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was other wise unable to change the ballot or correct any error); and

The voting systems in use prior to HAVA met this requirement. Neb. Rev. Stat. 32-917 allowed a voter to receive a replacement ballot should the ballot be spoiled or an error occur.

The statutory provisions still allow a voter to receive a replacement ballot should the ballot be spoiled or an error occur.

(a)(1)(A)(iii) if the voter selects more than 1 candidate for a single office—
(I) notify the voter that the voter has selected more than 1 candidate for a single office on the ballot;

(II) notify the voter before the ballot is cast and counted of the effect of casting multiple for the office;

The current vote tabulation systems currently used by Nebraska jurisdictions do not meet this requirement. Potential solutions to meeting this requirement (other than the provisions of (B)) would require the use of precinct level optical scanners or the expanded use of new electronic voting equipment at the polling sites. However, at this time the cost of such equipment on a statewide basis would require a disregard for one of the basic tenets of this plan: that costs not be passed onto the local jurisdictions. It is recommended that the current systems in use in the local jurisdictions continue to be used under the provisions of (B), but that this issue be revisited as continued federal funding of the Act becomes clearer.

Since 2004, new optical scan equipment has been purchased by the state for all counties. Precinct based optical scan units, which meet the requirements of subparagraph (A)(iii), were provided to 37 (of 93) counties.

(a)(1)(B) A state or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central county voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by—
(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for and office; and
(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error)

The initial federal funding level was insufficient to completely replace the paper ballot and central optical scan systems in use at the time HAVA was adopted . A voter education program was developed to meet the requirements of this subsection. The Secretary of State developed materials that are provided to each voter. Additional notices are posted within the polling site and assistance will be provided if requested.

New central scan units were provided to the remaining 57 counties (Adams Co. received both). As the central scan units are not capable of meeting the provisions of subparagraph (A)(iii), self education materials as outlined in subparagraph (B), have been made available in each polling booth as well as on privacy sleeves and other locations within the polling site.

(a)(1)(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.

Voter education developed under this subsection (B) provided instructions and other information to each individual voter so that they may review the information in private and cast their ballot appropriately.

Should funding become available and it is feasible to provide all counties with a precinct level optical scan system, such a system provides a mechanism to preserve the privacy of the voter.

Both the automated notification with precinct based units and the self education materials provided for central scan units preserve the privacy of the voter and confidentiality of the ballot.

(a)(2) Audit Capacity
(A) The voting system shall produce a record with an audit capacity for such system.

The voting systems in place in Nebraska in 2003 (hand count and central optical scan) met this requirement. Any future equipment purchases to comply with (a)(1)(A)(iii) or (a)(3) shall meet the requirements of this section.

(a)(2)(B) Manual Audit Capacity
(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.

The voting systems that were in place in Nebraska (hand count and central optical scan) meet this requirement. Any future equipment purchases to comply with (a)(1)(A)(iii) or (a)(3) shall meet the requirements of this section.

The systems provided to the counties (precinct and central scan) utilize a paper ballot that can be used in a manual audit. Such an audit (1% of precincts) was conducted after the '08 election cycle.

(a)(2)(B)(ii)The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.

The voting systems in place in Nebraska at the inception of HAVA (hand count and central optical scan) met this requirement. Current state

statute (32-917) allows a voter to receive a new ballot for any corrections that are necessary. Any future equipment purchases to comply with (a)(1)(A)(iii) or (a)(3) shall meet the requirements of this section.

(a)(2)(B)(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.

The voting systems currently in use in Nebraska (hand count and central optical scan) meet this requirement. Any future equipment purchases to comply with (a)(1)(A)(iii) or (a)(3) shall meet the requirements of this section.

The systems provided to the counties (precinct and central scan) utilize a paper ballot that can be used in a recount Several recounts have been conducted since the systems have been installed.

(a)(3) The voting system shall
(a)(3)(A) be accessible for individuals with disabilities, including nonvisusal accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for others;

The voting systems in place in Nebraska prior to HAVA (hand count and central optical scan) did not meet this requirement. The Secretary of State purchased equipment for use by the counties that meet the requirements of this section.

To meet this requirement, sufficient Automark voting units were purchased for distribution of one unit for each polling site. The Automark units meet the requirements of (a)(3).

(a)(3)(B) satisfy the requirement of subparagraph (A) through the use of 1 direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and

The voting systems in place in Nebraska (hand count and central optical scan) did not meet this requirement. The Secretary of State purchased enough units to allow the placement of at least one piece of accessible voting equipment in each precinct. The Secretary of State may recommend the consolidation of polling sites, not only for the purposes of this section but also to ensure that all polling sites are accessible.

(a)(3)(C) if purchased with funds made available under Title II on or after January 1, 2007, meet the voting systems standards for disability access (as outlined in this paragraph).

Any equipment purchased, either by the counties or by the State, after January 1, 2007 shall meet the disability standards as outlined in (A).

To date, no additional voting systems have been purchased after January 1, 2007.

(a)(4) The voting system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights of 1965 (42 U.S.C. 1973aa-1a).

Following the 2000 Census, two Nebraska jurisdictions were required to provide alternative language accessibility. Colfax County is required to provide materials in Spanish and Sheridan County is required to provide assistance in Lakota Sioux. The voting systems in place in Nebraska prior to HAVA were capable of meeting the language accessibility requirements. Systems purchased with Title II funds (Automark, precinct optical scan and central optical scan purchased by the state are capable of meeting not only the current required languages, but such additional languages as may be necessary in the future.

(a)(5) The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate established under 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.

The voting systems previously in place in Nebraska meet this requirement. Equipment purchased (Automark, precinct optical scan and central optical scan) have been certified to applicable FEC/EAC standards. Any future purchases of vote tabulation equipment whether by the state or local jurisdictions should not only meet the error rate standards but any additional standards issued by the Election Administration Commission.

(a)(6) Each state shall adopt uniform and nondiscriminatory standards that define what constitutes a vote…

Nebraska statute (32-901) defines a valid vote for each of the systems currently in use in Nebraska. The statute was amended through LB 358 to define a valid vote for the voting equipment placed at each polling site pursuant to (a)(3)(B).

Section 5

(5) How the State will establish a fund described in subsection (b) (Elections Fund) for purposes of administering the State's activities under this part, including information on fund management.

Legislative Bill 14, signed into law on February 20, 2003, created the Election Administration Fund. The Election Administration Fund consists of federal funds, state funds, interest, gifts, and grants appropriated for the administration of elections. The Secretary of State uses the fund for voting systems, provisional voting, computerized statewide voter registration lists, voter registration by mail, training or informational materials for election officials and for the general public related to elections, and any other costs related to elections or to implementation of the Help America Vote Act. Any money in the fund available for investment has been invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Since the creation of the fund, several business units have been created to more accurately distinguish between Title I, Title II, State Matches, and interest earned on the components of the fund.

Section 6

(6) The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on -

(A) the costs of the activities required to be carried out to meet the requirements of title III;
(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and
(C) the portion of the requirements payment which will be used to carry out other activities.

*Anticipated Revenue

*These numbers are based on actual receipts, appropriated amounts and estimates based on currently proposed funding levels. **Fiscal years are based on state fiscal years that run from July 1 to June 30.** While proposed funding

levels are below authorization levels in HAVA, this budget is based on conservative estimates.

The table below provides anticipated revenues from FY 08 and 09 federal appropriations as well as the required state match. The Fiscal Year reflects the state fiscal year that it is anticipated funds will be received.

	Fiscal Year 2003	**Fiscal Year 2004**	**Fiscal Year 2005**	**Fiscal Year 2006**
Title I Funding	$5,000,000	$0	$0	$0
Title II		$4,920,000	$8,829,000	$0
State Match	$260,000	$465,000	$0	$0
Subtotal	$5,260,000	$6,385,000	$8,829,000	$0
***Other State Funding**	$241,000	$240,000	$238,000	$238,000
Total	**$5,501,000**	**$6,625,376**	**$9,067,173**	**$238,000**

	Fiscal Year 2007	***Fiscal Year 2008***	***Fiscal Year 2009***	***Fiscal Year 2010***
Title I Funding	*$0*	*$0*	*$0*	*$0*
Title II	*0*	*$0*	*$0*	*$1,271,485*
State Match	*$0*	*$0*	*$35,795*	*$31,126*
Subtotal	*$0*	*$0*	*$35,795*	*$1,302,611*
****Other State Funding***	*$241,000*	*$240,000*	*$238,000*	*$238,000*
Total	***$241,000***	***$240,000***	***$273,795***	***$1,540,611***

*This amount (Other State Funding) is similar to previous appropriations for election administration. FY'99-'00 expenditures for election administration totaled $138,905. Maintenance of effort requirements in section 7 require a state to maintain the level of expenditures made for the purposes of the requirements payments. As the bulk of the requirements were not addressed or met by the state prior to HAVA, it is believed that

no state funds were expended in FY'99-'00 that meet the requirements of section 7. The category is included to show that the state has maintained the historical level of election administration funding. See Section 7 of this plan for further information.

Title III Requirements	***Fiscal Year 2003 (actual)***	***Fiscal Year 2004 (actual)***	***Fiscal Year 2005(actual)***	***Fiscal Year 2006(actual)***
Disability Equipment *(Section 301)*	*$0*	*$58,000*	*$79,000*	*$10,420,000*
Central VR *(Section 303)*	*$30,000*	*$173,000*	*$1,470,000*	*$1,480,000*
Training and Ed.*(Sec. 302, 303)*	*$4,000*	*$34,000*	*$19,000*	*$86,000*
Administration *(State Plan Committee, staffing, overhead)*	*$40,000*	*$205,000*	*$208,400*	*$243,000*
Total	*$74,000*	*$470,000*	*$1,776,400*	*$12,229,000*

Fiscal Year 2007 (actual)	***Fiscal Year 2008 (actual)***	***Fiscal Year 2009 (est.)***	***Fiscal Year 2010 (est.)***	***Fiscal Year 2011 (est.)***	***Fiscal Year 2012 (est.)***
$237,000	*1,045,000*	*605,000*	*$525,000*	*$370,000*	*$370,000*
$443,000	*$135,000*	*$1,290,000*	*$475,000*	*$475,000*	*$500,000*
$5,700	*$108,000*	*$4,000*	*$125,000*	*$6,000*	*$125,000*
$225,000	*$208,000*	*$210,000*	*$210,000*	*$210,000*	*$210,000*
$910,700	*$1,496,000*	*$2,109,000*	*$1,335,000*	*$1,061,000*	*$1,205,000*

Section 7

(7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

For Fiscal Year '99-'00, total state expenditures for elections were $138,905. While none of these funds were used for activities specifically mandated by Title III of the Act, it should be noted that appropriations for Fiscal Years '03-'04 and '04-'05 (LB 407, 2003) for elections (Agency 09, Program 45) were approximately $240,000 for each of the two fiscal years. This amount is an increase over total election expenditures for FY '99-'00.

The amended table in Section 6 (under "Other State Funding") reflects non HAVA expenditures for FY 06-09. Each years expenditures are in excess of total election expenditures for FY 99-00.

Section 8

(8) How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

The Secretary of State's office is responsible for the success of HAVA implementation and the meeting of performance goals. Local election officials also play a vital role in keeping information current and monitoring performance goals. The performance goals and specific instructions will be included in the elections manual. The counties will report their success with the HAVA implementation to the Secretary of State's Office, and the Secretary of State's Office will make these results available to the public.
Performance Goal 1: Central Voter Registration Database

This database will fully comply with the HAVA guidelines. It will be interactive between the counties and the Secretary of State's Office and will be compatible for updates with the Department of Motor Vehicles and Vital Statistics.

Performance Goal	Central Voter Registration Database
Timetable	303a to be implemented by January 1, 2006 303b to be implemented by January 1, 2004
Criteria used to measure performance	Compliance with HAVA requirements
Officials monitoring goal	Secretary of State, Deputy Secretary for Elections and Elections staff
Update as of 5/2004	Provisions of 303b (ID for mail in registrants) implemented for May 2004 election.
Update as of 5/2009	Project complete and in maintenance mode.

Performance Goal 2: Voter Accessibility
Improving voter accessibility, as required by HAVA, shall include accessibility for individuals with visual and physical impairment and with alternative language issues as determined by Title III, Section 301.

Performance Goal	Improving Voter Accessibility
Timetable	Implemented by January 1, 2006
Criteria used to measure performance	Compliance with HAVA requirements
Officials monitoring goal	Secretary of State, Deputy Secretary for Elections and Elections staff
Update as of 5/2004	Ongoing project. Counties have surveyed sites to determine deficiencies and in some cases consolidated sites.
Update as of 5/2009	Ongoing project. Counties have made improvements utilizing HHS grant funds. Independent surveys of each site completed in 2008.

Performance Goal 3: Provisional Ballots

The Secretary of State will set uniform procedures for provisional ballots to be in compliance with HAVA requirements. This procedure will be included in the elections manual.

Performance Goal	Provisional Ballots
Timetable	Implemented by January 1, 2004
Criteria used to measure performance	Compliance with HAVA provisions
Officials monitoring this goal	Secretary of State, Deputy Secretary for Elections and Elections staff and local election officials
Update as of 5/2004	Provisional ballot system in place for May 2004 election

Performance Goal 4: Voter Education

The Secretary of State's Office is committed to educating the voter regarding changes in election law and plans to implement the ideas expressed in section 3 of the State Plan.

Performance Goal	Voter Education
Timetable	Ongoing implementation to be completed January 1, 2006
Criteria used to measure performance	Compliance with measure described in elections manual. County officials will report any problems to the Secretary of State's Office.
Officials monitoring this goal	Secretary of State, Deputy Secretary for Elections and staff and County Election Officials.
Update as of 5/2004	Ongoing project. Voter education materials distributed to counties and precincts.
Update as of 5/2009	Ongoing project. Continue to distribute education and outreach materials developed in house. In addition have awarded grants to outside groups as provided in section 3.

Performance Goal 5: Poll worker training

The Secretary of State will define uniform procedures for poll worker training by local election officials. These standards and processes will be provided in the elections manual.

Performance goal	Poll worker training
Timetable	Implementation beginning January 1, 2004 and ongoing
Criteria used to measure performance	Survey will be sent to poll workers to measure knowledge of new standards and procedures
Officials monitoring this goal	Secretary of State, Deputy Secretary for Elections and staff, Local election officials
Update as of 5/2004	Ongoing project. Both large and small group training sessions held.
Update as of 5/2009	Ongoing project. Have established program of meeting on site with small groups of election officials. In addition have formed Poll worker Advisory committee of local officials to develop uniform materials.

Performance Goal 6: Election Official Training

The Secretary of State will perform extensive training session for local election officials using such regional networks as NACO (Nebraska Association of County Clerks). The Secretary of State's Office will also provide staff and procedures for training of election officials.

Performance goal	Election Official Training
Timetable	Implemented January 1, 2004; ongoing
Criteria used to measure performance	Election officials will be surveyed to measure knowledge of new standards and procedures
Officials monitoring this goal	Secretary of State, Deputy Secretary for Elections and staff
Update as of 5/2009	Ongoing project. Continue to develop training materials on various aspects of election administration. Currently working on training DVD for election officials and pollworkers.

Section 9

(9) A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.

An Administrative Complaint Procedure has been developed by the Secretary of

State that includes the following provisions:

I. Filing of Complaint and Response

Any person may file a complaint with the Secretary of State who believes that a violation of Title III of the Help America Vote Act or corresponding sections of state statute has occurred, is occurring or is about to occur. Such complaint shall be filed on a form developed by the Secretary of State and shall contain the name, address and phone number of the person making the complaint, the nature of the violation of Title III of the Help America Vote Act or corresponding state statutes, the date of the violation if the violation had previously occurred and other information deemed necessary by the Secretary of State. The form shall also allow the person making the complaint to indicate whether he or she desires a hearing on the record regarding the complaint. The complaint form shall be signed by the person making the complaint and shall indicate that the person believes the facts contained on the form to be true. The completed form shall be notarized.

The Secretary of State may, prior to hearing, respond to the complaint based upon the complaint and the Secretary of State's own investigation. Such response shall be in writing and may include a remedy. The complainant may waive the request for a hearing upon review of the Secretary of State's response. If the hearing request is not waived the hearing shall be held as described below. The response from the Secretary of State, whether or not favorable to the complainant, shall in no way effect the complainant's right to a hearing under these procedures.

II. Hearing Procedure

If a hearing is requested, the Secretary of State shall appoint a hearing officer to conduct a hearing on the record. Complaints of a similar nature may be combined for purposes of a hearing on the record. If the hearing officer determines that the complaint has merit, the hearing officer shall prepare a written finding and suggest potential remedies to the Secretary of State. The Secretary of State shall take action to ensure the violation is corrected. If the

hearing officer determines that there is no violation, the hearing officer shall issue a written finding dismissing the complaint.

If no public hearing is requested, the Secretary of State shall investigate the complaint. If the Secretary of State finds that the complaint has merit, the Secretary of State shall issue a written finding and take action to ensure the violation is corrected. If the Secretary of State determines that there is no violation, the Secretary of State shall issue a written finding dismissing the complaint.

Any written finding, whether by the hearing officer or the Secretary of State, shall be issued within 90 days of the filing of the complaint. This deadline may be waived in writing by the person making the complaint.

III. Alternative Dispute Resolution Process

Should the finding not be issued within 90 days of the filing of the complaint, the complaint shall be submitted to a dispute resolution center approved by the office of Dispute Resolution pursuant to the Dispute Resolution Act (Neb. Rev. Stat. §25-2901 et. seq.) for mediation. Any fees associated with such mediation shall be paid be the Secretary of State. The alternative dispute resolution process shall be completed within 60 days. Any records relating to the complaint shall be made available for the alternative dispute resolution process.

Section 10

(10) If the State received any payment under title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

As Nebraska had no qualifying punch card precincts, all Title I monies received were under Section 101. A portion of this payment was needed to meet the mandates of Title III. (See Sections 1 and 6 for further information.) However, smaller amounts were used to fund the State Plan development as well as training and education efforts.

Section 11

(11) How the State will conduct ongoing management of the plan except that the State may not make any material change in the administration of the plan unless the change…

The State Plan Commission will continue to exist after the development of this plan and will meet at least once each year to evaluate and make necessary

changes to the State Plan. The State Plan Commission will continue to exist until such time as the Title I and Title II monies are exhausted.

(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;

Upon review or suggestion by the State Plan Commission, any material changes to the State Plan shall be published in the Federal Register,

(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and

Upon review or suggestion by the State Plan Commission, any material changes to the State Plan shall be published and a period of public comment of not less than thirty days shall be provided.

(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

No material changes to the State Plan shall be effective until at least 30 days after the date of publication in the Federal Register.

Section 12

(12) In the case of a State with a State Plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State Plan for the previous fiscal year and of how the State succeeded in carrying out the State Plan for such previous fiscal year.

2004 Amendment

This Plan includes amendments from the plan submitted in fiscal year 2003. Material changes include updating budget figures (Section 6) to reflect additional appropriated funds, both federal and matching, and corresponding planned expenditures. The budget section also includes actual figures (rather than estimates) for fiscal year 2003. Other references to additional appropriated funds are included in Sections 1

Other changes include amending references from “DRE’s” to take into account other types of equipment that may be accessible to the disabled community. Also included are changes where the original plan provided for

actions to be taken that have since been accomplished. Among these changes are provisional balloting, voter ID, voter information and updates in Section 8 regarding performance goals and measures. References to specific dates regarding the State Plan Commission process in FY 2003 and the description of the Commission (Section 13) procedures have also been amended.

2009 Amendment
Amendments in 2009 were added to address federal fund allocations in Federal FY '08 and '09. The most substantive changes are in the budget areas (Section 6) to recognize the FY '08 and '09 funding as well as replacing expenditure estimates for State FY '05 through '08 with actual expenditure levels. In addition, because of the additional funding, expenditure estimates are added through State FY '13.

Most other sections contain amendments to indicate completion of various aspects of the Plan, such as the Central Voter Registration Database and delivery and use of disabled accessible voting systems. Section 8 (Performance Goals) was similarly updated to reflect completed and ongoing projects.

As federal funding provided in FY '08 and '09 was unanticipated, the State Plan Commission recommended, at its May 2008 meeting to continue with the basic tenets of the plan by providing maintenance and upgrades to the voter registration systems and voting systems and eliminating such costs at the county level. However, recognizing that federal funding will not continue forever, the Commission recommended beginning a process to reduce the county election offices' reliance on federal monies.

Section 13

(13) A description of the commission which participated in the development of the State Plan in accordance with section 255 and the procedures followed by the commission under such section and section 256.

On February 28, 2003, Secretary John A. Gale, chief election officer for the state of Nebraska, appointed a sixteen member citizen advisory commission to help in the development of the State Plan. The Commission is called the Nebraska State Plan Commission. Members included the election officials from Nebraska's two largest counties, a mid-size county election official, President of the Nebraska County Clerks Association, a representative from the Secretary of State's office and representatives from various advocacy organizations. Secretary Gale took recommendations for these appointments so that the Commission was representative of a wide cross-section of Nebraskans, including the disability and minority communities.

The State Plan Commission held meetings on March 18 and 26, April 7 and 21, and May 12, 2003 The initial State Plan developed from the recommendations of the Commission was released on June 9, 2003. The Plan was open for public comment and review for 30 days. The Plan was also the subject of a Public Hearing held on June 25, 2003. In addition to the public hearing, written comments on the Plan were solicited, either via a website or by other means. Media outlets were contacted to announce the completion of the Plan and the Public Comment period.

The State Plan Commission held additional meetings on November 18, 2003, February 26 and April 1, 2004 to review new developments and prepare suggested amendments to the State Plan Recommendations Report. The revised recommendations were completed in late April of 2004. The amended State Plan was published on June 21, 2004 for the initial 30 day comment period. It is available on the Secretary of State's website at http://www.sos.state.ne.us/election/HAVA.

The Commission held meetings in June and November of 2005 and June of 2007 during which updates on HAVA activities were provided. The Commission also met in June of 2008 to develop recommendations in light of the FY 08 federal appropriations.

Members of the State Plan Commission:

Member Name	**Office/Group Represented**
Carlos Castillo	Douglas County Election Commissioner Office (resigned due to change in employment)
David Phipps	Douglas County Election Commissioner Office
David Shively	Lancaster County Election Commissioner Office
DiAnna Schimek	State Senator/Chair of Government Committee (resigned – no longer member of Legislature)
Bill Avery	State Senator/Chair of Government Committee
Pauletta Gerver	Nebraska Association of County Clerks, Register of Deeds & Election Commissioners
Carlos Servan	Nebraska Commission of the Blind and Visually Impaired
Kathy Hoell	Statewide Independent Living Council, Inc.

Lois Poppe	League of Women Voters
Wayne Houston	NAACP
Steve Virgil	Nebraska Legal Services (resigned due to change in employment)
Amy Bracht	Assistant Secretary of State (resigned due to change in employment)
Becky Richter	Assistant Secretary of State
Dr. D'Andra Orey	Professor/University of Nebraska—Lincoln (resigned)
Dale Baker	Hall County Election Commissioner
Holly Burns	Hispanic Community Center (resigned)
Dr. Sara Crook	Professor/Peru State College
Tim Shaw	Nebraska Advocacy Services, Inc.
June Remington Pederson	Lincoln Area Agency on Aging

MARY HERRERA
NEW MEXICO
SECRETARY OF
STATE

NEW MEXICO STATE PLAN
FY 08-09

As required by Public Law 107-252
Help America Vote Act 2002, Section 253 (b)

Table of Contents

Executive Summary 3

State Plan FY 08-09 – Introduction 4-5

Background 5-6

Voting System Standards 6-14

1) Ballot Correction ..... (7)

2) Manual Audit Capacity ..... (7)

3) Disability Access ..... (7-8)

4) Alternative Language Accessibility ..... (8-9)

5) Error Rates and ABD Definition of Vote ..... (9)

6) Provisional Voting and Voting Information ..... (9-10)

7) Computerized Statewide Voter Registration System ..... (10-11)

8) Requirements for Voters Who Register by Mail ..... (11)

9) Training and Voter Outreach Education ..... (11-14)

Administrative Compliant Procedure 15-18

Changes to State Plan from Previous Fiscal Year - State Plan Summary 19-22

1) Funding Distribution and Controls ..... (19-20)

2) Performance Goals and Measures ..... (20-21)

3) Ongoing Maintenance Plan ..... (21-22)

4) Audits and Internal Controls ..... (22)

5) Maintenance of Effort ..... (22)

Attachment A: RFP - Electronic Poll Book Pilot Project .....

Attachment B: Proof of 30-Day Announcement .....

Attachment C: Requisition .....

Executive Summary

As the New Mexico Secretary of State, I oversee the entire election process throughout the State of New Mexico. This includes maintaining a computerized database of statewide registered voters, testing, evaluating and certifying voting machines and producing precinct boundary maps.

We are blessed to live in a nation where we have the freedom to vote. This precious right has been won and protected by our brave men and women who have fought to defend our liberty.

As the Chief Elections Officer for the state, I am working diligently to remove any obstacle in an effort to assist and encourage the citizens of New Mexico to vote. This year, we are making it easier to vote.

Indeed, there is no greater privilege of freedom extended to the citizens of New Mexico than the right to vote and elect the officials for public service who represent them at all levels of government.

As part of the Help America Vote Act (HAVA) of 2002, I along with my staff have taken great effort to continue to make the voting process more accessible and user friendly for voters. It has been an honor to be involved in the implementation of projects that further improve the election process. This update is a living document and working plan of action that will continue to evolve. Through its implementation, it will empower New Mexican voters to voice their electoral preference in an environment that ensures the independence and integrity of their vote.

It is my pleasure, along with the staff of the New Mexico Secretary of State's Office to continue to improve the election process.

The following pages provide an update of New Mexico's commitment to the empowerment of its voters that synthesizes integrity, accessibility and self-determination.

Sincerely,

Mary Herrera

NM SECRETARY OF STATE

FY 08-09 STATE PLAN

INTRODUCTION

This New Mexico State Election Plan for FY 08-09 is proposed in accordance with Public Law 107-252, Help America Vote Act 2002, Section 253 (b), was signed into law on October 29, 2002 and enacted to assist states in the administration of federal elections. This law establishes minimum standards for states and units of local governments with the responsibility for the *administration of federal elections.*

Since being newly elected for a four-year term, beginning January 01, 2007, the New Mexico Secretary of State Mary Herrera, has continued the process of working with the HAVA Advisory Commission, comprised of county clerks, election officials, state legislators, persons and agencies representing and working with people with disabilities. In compliance with the requirements under Title III, funding was provided for improving the accessibility and quality of polling places, training presiding judges, precinct officials, election volunteers and media outreach for informing voters with disabilities about the availability of accessible polling places as stipulated under Title I, Section 101, Title II, Section 251, Section 261 and Section 101.

For the purpose of this proposal and in response to funding being made available under HAVA, Title II, Section 251 for FY/'08-'09, as stipulated under Part I of Sub-title D of Title II, the New Mexico Secretary of State organized a committee to further improve the administration of elections for federal and statewide office. Based on the funding made available through this grant, the Secretary implemented a committee made up of county clerks, election staff from Lea, Taos and Valencia Counties and the Secretary of State's staff. A meeting was scheduled and held on April, 01, 2009 to consider an electronic poll book pilot project for further improving the administration of the election process in those counties identified above. (Note: The sole purpose of the committee identified is for improving the administration of the election process and not for replacing the HAVA Advisory Commission.) Since the intent of this initiative is to implement an Electronic Poll Book Pilot Project in the Counties of Lea, Taos and Valencia, New Mexico, these county government representatives were selected.

Further, at the discretion of the Secretary of State, funding under this grant is also being set aside for provision of services in accordance with Title II, Sections 261, 291 and 101. When funding becomes available, the Secretary of State shall convene a meeting with the HAVA Advisory Commission to consider recommendations provided for the initiatives identified below as Projects 2, 3 and 4 (page 20). The following are members of the HAVA Advisory Commission:

- Anthony Alarid – Gov. Commission on Disability
- Anne Arrasmith – Bernalillo County Clerk's Office
- Lucy Birbiglia – Independent Living Resource Center
- Bernadine Chavez – Protection & Advocacy
- Tom Day – Protection & Advocacy
- Georgina Dimas – New Mexico Secretary of State's Office
- Pat Putnam – Director, Developmental Disability Planning Council
- Art Schreiber – Advocate
- Gregg Trapp – Director Commission for the Blind
- Manny F. Vildasol – New Mexico Secretary of State's Office

BACKGROUND

Since statehood, the Constitution and Statutes of the State of New Mexico require all election materials be provided in both, the English and Spanish languages. Over the past 25 years the State of New Mexico has continued to improve its election process.

Beginning in the mid-1980's, the State of New Mexico began its transition from lever voting machines to direct recording electronic and optical scan voting systems. In the late 1980's, the State of New Mexico installed a statewide automated records system, to include an integrated voter registration system. In 1999, the New Mexico State Legislature appropriated funding for the Office of the Secretary of State to begin the process towards the installation of a new and more interactive system to incorporate voter registration and voter management. Subsequently, the new system is now installed in 32 of the state's 33 counties in a continuous effort to meet HAVA requirements. In recognition of the cost of voting systems acquisition, the state established the Machine Revolving Fund, a no-interest funding mechanism that counties may use to purchase new systems. Gradually, the debt ceiling of the fund has been raised to $6.5 million, of which a portion is New Mexico's HAVA matching funds.

In 1991, four years prior to the effective date of the National Voter Registration Act, New Mexico began registering voters at Motor Vehicle Division (MVD) site-offices. At the present time, voter registration services are being provided to the public via third-party agents, public libraries, MVD site-offices, universities, colleges and designated state agency-based site offices, whose primary mission is to provide public assistance to the general public and services to persons with disabilities.

Since 1993, the legislature recognized the need to expand opportunities for voting. Therefore, "early voting" activities were enacted, beginning three weeks prior to an election. New Mexico adopted the Federal Election Commission's Voting Systems Standards in 1993, requiring that all systems certified by the state be independently tested , meet federal performance and test standards. Since then, New Mexico's voters have been able to cast their ballot in person on at alternate locations. Early voting has become popular for the convenience it provides to voters.

In 1998, New Mexico began the use of an electronic canvassing system to ensure accuracy of results and elimination of manual entry and mathematical errors. In 2006, the state changed over to the paper ballot system, which tripled the audit of election returns. After counties audit the canvass, the state audits each county's returns through a system of duplicate returns forwarded directly from the precinct to the Office of the Secretary of State. After the Bureau of Elections completes its audit, independent auditors contracted by the state re-examine the returns. Though this triple audit process, the State of New Mexico can ensure that the integrity and accuracy of its canvass process is maintained at the highest level.

Presently, New Mexico's Election Code is uniformly applied in all 33 counties. The code requires that a uniform ballot be used throughout the entire state. In order to maintain uniformity, the Office of the Secretary of State approves all ballot content and layout for federal and statewide races.

VOTING SYSTEM STANDARDS

Section 301 of the Help America Vote Act sets forth specific standards for voting systems. HAVA requires each voting system to: 1) permit voters before casting their ballot to verify the candidates or questions they have voted; 2) allow voters to change or correct their vote in a private and independent manner; 3) inform voters if they have over voted (voting for more than one candidate for a single office); 4) inform the voter of the opportunity to receive a replacement ballot; 5) produce a paper record with a manual audit capability; 6) be accessible to people with disabilities through the use of at least one HAVA compliant voting system located at each polling site; 7) provide alternative language accessibility pursuant to Section 203 of the Voting Rights Act of 1965 via the ES&S AutoMARK™ voter assist terminal, a breakthrough ballot-marking technology that allows voters with disabilities and other special needs to mark a ballot privately and independently. The technology also provides language assistance to voters who are more comfortable speaking a different language or who need help to better understand written instructions; and 8) comply with error rates established under the provisions of HAVA. In addition, states are required to adopt uniform and non-discriminatory standards that define what constitutes a vote and what will be counted as a vote for each voting system.

The paper ballot voting system in the State of New Mexico provides a two-sided paper ballot so voters can verify their ballot before it is cast and counted.

Ballot Correction

HAVA provides an opportunity for states using paper ballot voting systems; requirements of the Act establish a voter education program specific to each voting system notifying voters of the effect of over voting. This notification requirement includes providing voters with instructions on how to correct the ballot.

The State of New Mexico has both statutory language and administrative procedures in place for paper ballot voting systems at the polls. Additional instructional signs are placed in all polling sites. Instructions on obtaining a replacement ballot for absentee voters are included in the mailed ballot materials. The Secretary of State posts instructional materials for all voting systems on its website. The State also instructs county clerks to post the information on their website.

Manual Audit Capacity

New Mexico statute requires that every voting system must have a manual audit capacity and the ability to produce a paper record. Other statistical information required is election date, precinct number, polling site, number of voters and votes cast, names of precinct board members, opening and closing of polling sites.

Disability Access

HAVA requires voting systems be accessible to voters with disabilities and citizens in need of special assistance. There must be the same opportunity for access, privacy, participation and independence that other voters enjoy.

The State of New Mexico has used HAVA federal funding to purchase one HAVA compliant voting system with audio assist for each polling site throughout the State.

This purchase being one of the highest priority items included training counties in programming and maintenance. A voter education program was developed to ensure voters with disabilities were fully educated on the use of the new HAVA compliant voting systems. Precinct official training programs were developed and implemented in order to provide election workers with the necessary skills to operate the systems for elections.

Further, New Mexico has long recognized the importance of providing accessible polling sites as part of its voter outreach efforts. Since 1979, the State of New Mexico has mandated that all polling sites be accessible to voters with disabilities or citizens with special needs. In order to maintain this requirement, a physical

inspection of the polling sites is conducted by county clerks prior to each election. To further ensure compliance and uniformity, the Office of the New Mexico Secretary of State has provided instructional materials to county clerks to enable them to evaluate polling site accessibility. In accordance with this program, the state continues to collaborate with the New Mexico Protection and Advocacy System in updating all instructional materials and encouraging those with disabilities to exercise their right to vote in a private and secure manner. A variety of methods, including independent consultants and local disability advocacy groups have been consulted to ensure each polling site in New Mexico has been surveyed for disability access. A continuous effort is extended to bring all polling sites into ADA compliance.

Alternative Language Accessibility

HAVA requires voting systems to provide alternative language accessibility pursuant to the requirements of Section 203 of the Voting Rights Act of 1965.

Under New Mexico's Constitution and Statutes, all election materials are required to be printed in the Spanish and English languages. Where minority language is historically unwritten, all proclamations, registrations, voting notices, instructions, assistance and other information related to the electoral process are provided orally in the respective minority language. This protocol also applies to the media when practicable, public meetings and on Election Day at the polling sites.

In 1988, the Office of the Secretary of State created its Native American Education Information Program. Two Native American Bureau of Election employees provide comprehensive and detailed election information to all tribes in the state. Election Proclamations and proposed ballot questions are translated into nine native languages. Once translated, they are radio broadcasted in counties with pueblo and tribal citizens in order to inform them of the intent and effect of the proposed ballot questions. Counties with large Native American populations have intertribal local programs and Native American staff that assist the surrounding populations and provide registration and election information programs. The Office of the Secretary of State facilitates training and assistance to local Native American coordinators. Counties with Native American populations provide translators at polling sites on election-day. In addition, ES&S AutoMARK™ Voter Assist Terminal also provides audio assistance to the visually impaired and alternative language accessibility.

Error Rates & ABD Definition of Vote (NEED TO CHANGE)

HAVA requires the error rate of all voting systems used to conduct federal elections shall comply with the current error rate standards by the Federal Election Commission. These error rates are attributed to the voting system and not due to the actions of individual voters.

All voting systems certified in the State of New Mexico are required to meet the federal standards under state statutes. Any future systems acquired in compliance with HAVA requirements shall also meet the established federal error rates.

HAVA also requires states adopt "uniform and non-discriminatory standards" for what constitutes a vote. New Mexico has seen an extraordinary increase in the use of absentee ballots by voters. By statute, a uniform, statewide definition of what constitutes a vote on paper ballot was established, in accordance with 1-9-4.2B (1-3), NMSA 1978. This instruction complies with federal election law.

Provisional Voting and Voting Information

Provisional Voting

HAVA requires states provide a provisional ballot ("fail safe voting" under the National Voter Registration Act) to any individual who declares they are a registered voter and are eligible to vote in a federal election. The Act requires the State of New Mexico to provide a "free-access" system so an individual who casts a provisional ballot may determine whether or not their vote was counted.

New Mexico utilizes the "fail safe" voting provisions of the National Voter Registration Act (NVRA) of 1993. Provisional Voting was enacted into state law and will be a positive expansion of "fail safe" voting. New Mexico provides a provisional voting program, with all election materials necessary to allow voters to take full advantage of provisional ballots. In order for voters to determine the disposition of their provisional ballot, the Office of the Secretary of State provides a toll-free phone line. County election officials also provide a report on the disposition of each provisional ballot to the New Mexico Secretary of State's Bureau of Elections. An administrative rule has been implemented to establish uniform procedures for provisional voting.

Voting Information

HAVA requires specific voting information be posted at every polling site on Election Day: including a sample ballot; instructions on how to vote and cast a provisional ballot; instructions for mail-in registrants; first-time voters; and general information on voting rights and voter fraud.

New Mexico currently posts and publishes voter information through a variety of media outlets available at various locations. Election Proclamations are published in legal notices for five consecutive days and constitutional amendments are published in legal notices in every county, four times prior to an election. These notices are also posted on the Secretary of State Mary Herrera's website and broadcast in Native American languages. The Office of the New Mexico Secretary of State publishes a voter guide with the listing of the offices, candidates on the ballot and the content (including pro and con arguments) of each constitutional amendment or general obligation bond. The Office of the New Mexico Secretary of State has maintained a toll-free telephone number for over 25 years, so all voters may receive voting assistance, inquire about the electoral process or report irregularities at the polling sites.

In addition to the information provided, New Mexico continuously strives to maintain compliance with all voter information requirements of the Help America Vote Act.

Computerized Statewide Voter Registration System

HAVA requires states to establish a "single, uniform, official, centralized, interactive, computerized state voter registration list defined, maintained and administered at the State level…"

In 1989, the New Mexico Election Code was amended to include the Automated Voter Records System Act. The act requires the Office of the New Mexico Secretary of State to establish a statewide computerized voter registration system. The Secretary of State's Information Technology staff collaborates with county clerks to generate monthly reports to address errors, other discrepancies and duplicate social security numbers. The State of New Mexico is permitted under the Privacy Act of 1974 to mandate the entire social security number for voter registration.

In 1999, the New Mexico Secretary of State's Office received legislative funding and began working with a committee of county clerks and data processors to establish a statewide voter registration system called the Voter Registration and Election Management System (VREMS). The committee developed system requirements, interviewed vendors, sought references from other states and worked with the State Purchasing Department to create a request for proposal process. After a selection was made by the committee, installation

in the pilot county began in early 2000. Presently, the statewide computer database system has been installed in 32 of the 33 counties in the State of New Mexico. The installation of the last county is expected to be completed by the end of the federal FY/08-09.

.

The system shall meet all HAVA standards and is designed to meet the list maintenance requirements of the National Voter Registration Act (NVRA). Presently, it is being centrally administered by the Office of the New Mexico Secretary of State.

Requirements for Voters Who Register by Mail (Mail-In Voter Registration)

Section 303 of the Help America Vote Act requires first-time voters who register by mail to submit documentation such as, valid photo ID, a copy of a current utility bill, bank statement, government check, paycheck or other government document that verifies the name and address of the voter. HAVA also requires the mail-in voter registration form to ask separate "yes" or "no" questions regarding citizenship and age. The form also must contain a statement that informs voters that if they respond "no" to either question, then they are not to complete the form. The Act requires the form contain language informing the first-time registrant by mail of the identification requirements.

In addition, the Secretary of State designed and implemented a new voter registration application form in compliance with federal and state requirements. The form includes a protocol for the county clerks to properly process registrations and informs first-time applicants when they have failed to file the required documents.

Training and Voter Outreach Education

HAVA requires states to provide training programs for local presiding judges, precinct officials and poll workers, including voter education programs.

Training

As the Chief Election Officer for the State of New Mexico, the Secretary of State is compelled by election law to "obtain and maintain uniformity in the application, operation and interpretation of the Election Code." The Secretary of State is required to conduct election schools on a statewide basis including all 33 county clerks and provide supervision and training of precinct officials throughout the state. In addition, the Secretary of State must develop, print and distribute all forms and instructions, prescribed by the Secretary of State. The Secretary of State is currently in the process of providing these materials on the agency's website.

The Secretary of the State conducts election schools for county clerks prior to each statewide election. An election school is a 2-3 day hands-on workshop covering many aspects of election administration and application, including the training for voting machine technicians. In FY/07-08, the Secretary of State provided two comprehensive election school training workshops to the 33 county clerks in the State of New Mexico. Additional training workshops are scheduled for FY/08-09. In addition to the scheduled election schools provided prior to an election, training workshops are made available upon request from the county clerks. Furthermore, the New Mexico Secretary of State's Office, Bureau of Elections regularly attends county clerk affiliate meetings to inform local election officials of any changes to state and federal law.

The Office of the New Mexico Secretary of State has expanded training, to include a comprehensive training manual for local precinct officials, presiding judges, election judges and other poll workers throughout the state. The Secretary of State has implemented a certification program that recognizes individuals who participate in the agency sponsored election schools. The goal of the Secretary of State is to establish statewide and national certification programs that recognize the importance of standardized training being provided to county clerks, their staff and election workers. This would include county election officials earning credit for classroom training, on-the-job experience, attending seminars and meetings on election administration. The certification would include a process for the testing of election officials and on-site reviews of county election practices and procedures. After completion of sufficient credit hours, a certificate would be awarded. Furthermore, ongoing certification would require continuous training, attendance at seminars and meetings and a regular evaluation of administrative practices.

The Secretary of State has provided technician voting machine certification training through the voting machine vendor. This would assure all 33 county clerks do not have to rely on vendors for the operation and programming of their voting system. Further, as a part of the state's training requirements, precinct board manuals have been updated as funding has been available and video instructional materials have been developed appropriate to each voting system in use. Also role-playing in the training of poll workers is utilized; the use of visual aids; the self-testing of poll workers following various training sessions; and ways of dealing with the shortage of poll workers in certain areas.

Training will continue to be provided to presiding judges and precinct officials on the needs and legal rights of all voters, including voters with disabilities, as they relate to the registration and voting process. In an effort to improve the election process for precinct officials and all voters in the State of New Mexico, the Secretary of State's Office is committed to working with Protection and Advocacy System Representatives, including, but

not limited to, the New Mexico Governor's Commission on Disability, the New Mexico Commission for the Blind and the American Association of Retired Persons.

The Bureau of Elections, within the Office of the Secretary of State, provides training, technical assistance and responds to queries from county clerks, precinct officials, elected officials, candidates and citizens. The bureau's staff monitors and supervises presiding judges and precinct officials training across the state.

Voter Outreach Education

User-friendly, non-technical voter outreach materials provide information for voters on the requirements for registration, use of voting systems and their rights as a voter. The New Mexico Secretary of State's Voter Guide is published prior to General Elections and includes a listing of offices and candidates on the ballot; a list of ballot questions; and an analysis of ballot questions both in English and Spanish languages. Similar information is provided to non-written Native American language speakers through radio broadcast. Furthermore, the New Mexico Secretary of State's Office is developing written materials for Native American languages that have been non-written languages, such as Navajo and Tewa Pueblo languages.

Voter and election information is provided on the New Mexico Secretary of State's website. Depending on funding availability, the Voter Guide may be mailed to every household in the state. Further, registration instructions and requirements are included on the Voter Registration Certificate Application, this may also be located on the New Mexico Secretary of State's website. Instructions to voters on the operation of voting systems are posted inside the privacy booth and absentee ballot instructions are included in the materials sent to voters.

Currently, the Office of the New Mexico Secretary of State's website provides a plethora of information, such as, but not limited to:

- General Election Information and Instructions
- Sample Ballots for All 33 Counties
- Native American Election Information
- Statewide Polling Site Locations
- Provisional Ballot Information
- General Information for Military and Overseas Voters
- Federal Identification Requirements for Registration by Mail

- Absentee Ballot Voting
- How to Obtain a Replacement Absentee Ballot
- How to Report Suspected Voter Fraud
- How to File an Administrative Complaint
- Campaign Finance Reporting
- Lobbyist Reports
- Financial Disclosures
- Political Action Committees
- Confidential Address Program
- Governmental Conduct Act
- Informational Voter Materials for Persons with Disabilities (Currently being developed for the website.)

The Secretary of State works with state agencies whose primary mission is to provide services to persons with disabilities and those receiving public assistance with the opportunity to register to vote.

Voter outreach programs were developed and implemented to encourage greater youth participation in the electoral process. As part of a statewide effort to increase voter turnout, poll-site location information is being promoted through television, radio and other written media formats.

Additional voter outreach is being undertaken to make sure the election process is accessible and accounts for the voter's needs that includes curbside voting and ballot access for those with medical emergencies on Election Day. To promote access for the deaf and hard of hearing, the Office of the Secretary of the State and county clerks throughout the state are utilizing Telecommunication Devices for the Deaf (TDDs) and training election staff on the use of these devices. In addition, separate communication lines are made available to them. Through direct publicity campaigns and assistance provided by community-based-disability organizations, the state has undertaken outreach efforts designed to educate persons with disabilities about their right to register, vote, how and where to do so.

County clerks throughout the state continue to be encouraged to apply for grants, under Section 261 of the Help America Vote Act, to upgrade facilities for better voter access.

ADMINISTRATIVE COMPLAINT PROCEDURE

HAVA § 402 (a) (1) mandates New Mexico to establish and maintain a state-based administrative Complaint procedure to remedy grievances under HAVA Title II, Section 251 (i.e. regarding voting systems standards, provisional voting, voting information and computerized statewide voter registration list requirements and requirements for voters who register by mail). HAVA sets forth the specific requirements of this administrative compliant procedure and NM Law [Laws 2003, Ch 356, § 5 ("Ch. 356"] essentially replicates the requirements. Following the development of the HAVA State Plan, the Secretary of State will implement a rule for this administrative compliant procedure in accordance with the State Rules Act [NMSA 1978 §§14-4-1 though 14-4-11 (1995)].

The administrative complaint procedure is intended both to be informal in nature and to work toward an administrative, not judicial resolution to the problem in violation of HAVA, Title III. The procedure will be flexible in addressing and resolving such complaints at the administrative level.

New Mexico's Election Code has been structured and implemented to prevent or minimize the occurrence of voting problems. If any voting problems occur, the NM Secretary of State's Office, State's Bureau of Elections and the 33 county clerks strive to immediately address and remedy the problem. Over the years, the election officials have been very successful in addressing issues. New Mexico is in a good position to build upon its current problem-solving process through the implementation of the administrative compliant procedure envisioned by HAVA. New Mexico complies with most of HAVA's Title III requirements and has enacted changes to its Election Code to meet the Title III requirements. Consequently, New Mexico anticipates very few allegations of Title III violations that cannot be resolved informally as election officials have been doing for years.

The State anticipates all aspects of its administrative compliant procedure will be open to the public. To meet the specific requirements of both HAVA and Ch. 356, New Mexico has adopted rules implementing an administrative complaint procedure as follows:

A. Any complaint filed under the procedure must be limited to alleging a specific violation of Title III. In educating voters, New Mexico will inform all voters about Title III provisions and procedures for filing a complaint. To ensure the procedure is uniform and nondiscriminatory, both the information provided to voters and the administrative compliant procedure will be available in alternative languages and formats pursuant to HAVA § 402 (a) (2) (A) and the state election code.

B. Consistent with and in compliance to, the 33 county clerks and the Secretary of State will continue to address oral complaints in an attempt to resolve the problem informally and expediently. However, a formal complaint alleging a Title III violation must be submitted in writing to the New Mexico Secretary of State's Bureau of Elections. A complaint form will be available from any county clerk, the New Mexico Secretary of the State and accessible on-line. HAVA § 402 (a) (2) (B); Ch. 356, § 5(B).

C. A formal complaint alleging a Title III violation must be submitted to the Secretary of State's Bureau of Elections. HAVA § 402 (a) (2) (C); Ch. 356, § 5(C).

D. If the Secretary of State receives duplicative or repetitive complaints alleging Title III violations, the Secretary may consolidate these for assessment, investigation and resolution. HAVA § 402 (a) (2) (D); Ch. 356, § 5 (B).

E. If the Secretary of State determines a written complaint alleges an actual Title III violation and the complainant requests a hearing on his or her grievance, the Secretary of State will appoint a hearing officer to conduct a hearing on the record. If the complaint is directed at a county election official, the hearing officer may be an employee of the New Mexico Secretary of State. If the complaint is directed at the New Mexico Secretary of State, the Secretary shall appoint a neutral hearing officer with no working or personal relationship with the office of the New Mexico Secretary of State. The record will include, the written complaint, any written response to the complaint, all documentation provided in support of or in defense of the complaint, and the written or audio record of any formal proceedings conducted with regard to the complaint. HAVA § 402 (a) (2) (E); Ch. 356, § 5 (D).

The investigation and resolution process may include the following steps or actions by the Secretary of State, as deemed appropriate under the circumstances by:

1) sending an acknowledgement letter to the complainant, and notifying him /her they are entitled to a hearing on the record; and
2) making an initial assessment of the complaint and determining whether it alleges a bonafide Title III violation; and
3) seeking a response from the election official against whom a complaint is made; and
4) providing the complainant with a copy of any response received from the election official against whom a complaint is made and giving the complainant an opportunity to reply; and
5) engaging in formal resolution with the parties through a meeting, teleconference or other means; or
6) dismiss the complaint based on its clear failure to allege a Title II violation.

If the Secretary of State determines that a Title III violation has occurred, the State shall provide a remedy appropriate to the violation. Any remedy shall be in compliance with the provisions of the New Mexico Election Code. HAVA nor Ch. 356 defines an "appropriate remedy" for a Title III violation, the State has the flexibility to remedy the problem, but to ensure the problem does not recur. In no event shall the remedy involve either the payment of money to the complainant or a finding that an election official is subject to civil penalties. An appropriate remedy may include a written finding that Title III has been violated and the plan for rectifying the particular violation, an assurance additional training will be provided to the election official to ensure compliance with HAVA and the New Mexico Election Code and a commitment to better inform voters of their rights, etc. A notice will be posted on the website and a distributed news release as it deems appropriate, the NM Secretary of State's Office shall publicize the results of its assessment and investigation of the complaint. HAVA § 402 (a) (2) (F); Ch. 356, § 5(E).

F. If the Secretary of State determines that Title III has not been violated, the State shall dismiss the complaint. A notice shall be posted on the website and a distributed news release as appropriate, the New Mexico Secretary of State's Office shall publicize the result of its assessment and investigation of the complaint that result in a finding that no Title III violation has occurred. HAVA § 408 (a) (2) (G); Ch. 356, § 5(E).

G. The Secretary of State shall make a final determination regarding a written complaint within 90 days after it has been filed with the Secretary of State, unless the complainant consents to extending the deadline. This final determination shall be in writing, provided to the complainant and the election official against whom the complaint was made. An effort will be made to ensure the 90-day timeline is met, if additional time is needed, the State must request an extension of time from the complainant. If the complainant refuses to consent to an extension, either the State must make its final determination or the complaint will automatically proceed to alternative dispute resolution. HAVA § 402 (a) (2) (H); Ch. 356, § 5(F).

H. If the NM Secretary of State fails to make a final determination within the 90-day timeline or as extended by consent of the complainant, the complaint shall be resolved pursuant to the procedures set forth in the New Mexico Governmental Dispute Resolution Act [NMSA 1978 §§ 12-8A-1 though 12-8A-5 (2000)]. This Act provides that the parties shall develop an agreement which will govern the alternative dispute resolution process. All the records and materials from the hearing shall be made available for use in the alternative dispute resolution procedure. The Secretary of State must adopt the agreement reached by the parties to the alternative dispute resolution procedure within 60 days after the complaint is referred for resolution under the New Mexico Governmental Dispute Resolution Act. HAVA § 402 (a) (2) (I); Ch. 356, § 5(F).

HAVA gives the State the discretion to choose what it deems to be the most appropriate method of complying with the elements of its HAVA State Plan. HAVA § 253 (c). Generally, the right to judicial review is specifically provided by statute. Neither HAVA nor Ch. 356 provides a statutory right to judicial review of a determination made by the State pursuant to the administrative complaint procedure. The New Mexico Administrative Procedure Act only "applies to agencies made subject to coverage by law," NMSA 1978, § 12-8-23 (1969), and because Ch. 356 does not make the Secretary of State subject to this Act, the HAVA administrative complaint procedure need not comply with the Administrative Procedures Act requirements. New Mexico's administrative complaint procedure will develop upon existing law and procedures, providing an informal and flexible approach to resolving Title III violations. Therefore, this procedure will not include judicial review provisions.

CHANGES TO STATE PLAN FROM PREVIOUS FISCAL YEAR

FY 08-09 STATE PLAN SUMMARY

Funding Distribution and Controls

The Help America Vote Act requires States to include information on how they plan to establish funds used to make expenditures meet the various requirements of the Act; information on fund management; and information on estimated costs. Therefore, the Secretary of State intends to utilize federal funds to address the requirements placed on the state by the Help America Vote Act, under this HAVA Grant as identified in Title II, Section 251 for FY/'08-'09, as stipulated under Part I of Sub-title D of Title II and for discretionary improvements in accordance to Title I, Section 101 and Title II, Sections 251, 261 and 291 as described below.

NOTE: The State of New Mexico has established an election fund account, separate from the State's General Fund and interest earned will be credited to the fund. The Secretary of State will centrally manage projects funded by HAVA requirements payments. Depending on the eventual level of federal funding, including the costs of maintenance and ongoing improvements required by HAVA.

Further, it is anticipated that the $705,983 provided under the HAVA Grant as identified in Title II, Section 251 for FY 08-09 with a required 5% match from the State of New Mexico in the amount of $37,157 will be used to provide the following:

The State Plan recommends that the State of New Mexico adopt the following changes to the State Plan from the previous year through:

Project # 1 - Implement pilot program with the counties of Lea, Taos and Valencia for testing of an Electronic Poll Book system in accordance with HAVA, Title II, Section 251 for FY 08-09, as stipulated under Part I of Sub-title D of Title II (refer to Attachment A).

Cost: $665,545.00

Project # 2 -Facilitate statewide training for county clerks in ADA compliance and voter education, as well as other HAVA requirements in accordance with Title I, Section 101 and Title II, Sections 251, 261 and 291.

Cost: $20,000

Project # 3 - Provide voter registration and election information campaigns to the general public through the media in accordance with Title I, Section 101 and Title II, Sections 251, 261 and 291.

Cost: $47,595.00

Project # 4 - Provide Statewide Community Voter Registration and Voter Information Campaigns, including provisions for Persons with Disabilities in accordance with Title I, Section 101 and Title II, Sections 251, 261 and 291.

Cost: $10,000

Project # 5 - Complete the installation of the computerized statewide voter registration file, interactive database for all registered voters known as Voter Registration and Election Management System (VREMS) among the 33 county clerks and the New Mexico Secretary of State's Office consisting of the election system in the State of New Mexico in accordance with HAVA, Title II, Section 251 for FY 08-09, as stipulated under Part I of Sub-title D of Title II.

Cost: $0.00

NOTE: No funds will be made available to private organizations

Performance Goals and Measures

Performance Goals

The Secretary of the State shall, in collaboration with the county clerks, establish performance goals and institute a process to measure progress. Activities include, but are not limited to:

Project # 1 Goal

Local, statewide and federal elections in the State of New Mexico will improve in the counties of Lea, Taos and Valencia as a result of introducing and implementing an Electronic Poll Book System. (Note: Specifics for the implementation of this project will be identified in accordance with and in compliance to state laws and rules; and as set forth through a state contract approved by the State of New Mexico General Services Department, Procurement Services Division and the Department of Information and Technology; refer to Attachment A).

Date of Completion: 12/31/2010

Project # 2 Goal

Through educational workshops, the county clerks' and election workers' knowledge will increase in voter education, HAVA ADA compliance and NVRA requirements.

Date of Completion: 10/15/2010

Project # 3 Goal

Through a statewide media campaign, the general public's knowledge of voter registration and elections will increase.

Date of Completion: 11/15/2010

Project # 4 Goal

Through voter registration drives and voter education campaign initiatives, voter registrations and voter education will increase throughout the State of New Mexico.

Date of Completion: 12/31/2010

Project # 5 Goal

Through a collaborative effort between the New Mexico Secretary of State's Office, San Juan County Clerk's Office and the vendor, ES&S, the Statewide Interactive Voter Registration Election System (VREMS) will be completed.

Date of Completion: 10/01/2010

Measures

The following areas of each project will be measured and performance data will be collected for each:

1) Scope (measure events affecting cost, implementation, schedule or quality).
2) Schedule (progress toward goals); Resources (measures personnel and financial investment).
3) Quality (measures effectiveness); and Risk (measures impact of certain events on operations).

Note: New Mexico has already enacted performance-based budgeting for all state agencies.

Ongoing Maintenance Plan

HAVA requires states to include their plan comments on how they will conduct the ongoing management of the plan.

The New Mexico Secretary of State is the "Chief State Election Official" responsible for the coordination of all of the state responsibilities under the Act. This plan will be an essential component in New Mexico's continuing effort to improve the elections process and comply with the provisions of the Help America Vote Act. While this plan is to meet requirements of HAVA, it is a matter of policy that the plan be considered a living, flexible, working document designed to assist New Mexico in the improvement and management of the election processes.

The Secretary of State understands and agrees to comply with HAVA requirements related to the ongoing management of the Act. The Secretary of State will not make any material change to this plan unless the change:

1) is developed and published in the Federal Register in accordance with Section 255 of the Act; and
2) is subject to public notice and comment in accordance with Section 256 of the Act in the same manner as the State Plan; and
3) takes effect only after the expiration of the 30-day period that begins on the date the change is published in the Federal Register.

Audit and Internal Controls

The State Auditor's Office conducts audits of the Office of the New Mexico Secretary of State and related programs. Audits conducted by the State Auditor will be conducted according to accepted auditing standards for financial audits issued by the Comptroller General of the United States.

Maintenance Effort

The Help America Vote Act requires a State that receives "requirement" payments to maintain the expenditures of the State at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 01, 2009. This portion of the Act is often referred to as the "maintenance of effort" clause.

[FR Doc. E9–21509 Filed 9–4–09; 8:45 am]
BILLING CODE 6820–KF–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13535–000]

Muskingum Valley Hydro; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 1, 2009.

On July 6, 2009, Muskingum Valley Hydro filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Muskingum Valley Hoover Dam Hydroelectric Project No. 13535, to be located at the existing Hoover Dam, on the Big Walnut River, in Franklin County, Ohio. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The existing Hoover Dam is owned and operated by the Ohio Department of Natural Resources and includes the existing reservoir, dam, outlet works, and tailrace. The proposed project would consist of: (1) The existing 85.5-foot-high earth fill concrete gravity Hoover Dam equipped with a 680-foot-long ogee spillway; (2) an existing 3,272-acre impoundment with a normal water surface elevation 890 feet mean sea level; (3) a new 30-foot-long by 30-foot-wide powerhouse containing two turbine generator units for a total installed capacity of 3.5 megawatts; (4) a new 600-foot-long, 14.7-kilovolt transmission line; and (5) appurtenant facilities. The proposed project would operate in run-of-river mode and generate an estimated average annual generation of 30,600,000 kilowatt-hours.

Applicant Contact: Randall J. Smith, Muskingum Valley Hydro, 4950 Frazeysburg Road, Zanesville, Ohio 43701, (740) 891–5424.

FERC Contact: Michael Watts, (202) 502–6123.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13535) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–21626 Filed 9–4–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2067–040]

Tri-Dam Project; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 1, 2009.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Shoreline Management Plan (SMP).

b. *Project No:* 2067–040.

c. *Date Filed:* June 23, 2008.

d. *Applicant:* Tri-Dam Project.

e. *Name of Project:* Tulloch Project.

f. *Location:* The project is located on the main stem of the Stanislaus River in Calaveras and Tuolumne Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Steve Felte, Tri-Dam Project, P.O. Box 1158, Pinecrest, CA 95364–0158, (209) 965–3996.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8674, or by *e-mail: shana.high@ferc.gov.*

j. *Deadline for filing comments and/or motions:* October 01, 2009.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Proposal:* Tri-Dam Project filed, for Commission approval, an SMP for the Tulloch Project to provide for: (1) An inventory of sensitive environmental resources within the project boundary; (2) maps of sensitive shoreline zones that should be afforded extra protection; (3) strategies to protect sensitive areas from inappropriate encroachment; (4) provisions for future updates to the SMP, as new information becomes available; and (5) provisions for informing shoreline private landowners about the importance of protecting the zones identified as having sensitive environmental resources.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov;* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the