

Commonwealth of Pennsylvania State Plan



As Required by Public Law 107-252,
The Help America Vote Act of 2002

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TABLE OF CONTENTS

<i>Introduction</i>	page 1
<i>Elements of the State Plan</i>	
Element 1. How the State will use the requirements payment	page 7
Element 2. How the State will distribute and monitor the distribution of the requirements payment.....	page 28
Element 3. How the State will provide for programs for voter education, election official education and training, and poll worker training.....	page 31
Element 4. How the State will adopt voting system guidelines and processes, which are consistent with the requirements of section 301of HAVA	page 34
Element 5. How the State will establish the fund required by section 254(b) of HAVA, including information on fund management	page 35
Element 6. State's proposed budget for activities under Part II of HAVA.....	page 36
Element 7. State's maintenance of effort.....	page 40
Element 8. How the State will adopt performance goals and measures.....	page 41
Element 9. Description of the State-based administrative complaint procedures.....	page 45
Element 10. How payments received under Title I will affect activities carried out under the State Plan.....	page 47
Element 11. How the State will conduct ongoing management of the plan.....	page 48
Element 12. How the plan reflects changes from the previous fiscal year.....	page 50
Element 13. Description of the State Plan Advisory Board.....	page 51
<i>Appendices</i>	
Appendix A. List of Witnesses.....	page 54
Appendix B. Voting Systems used in the November 7, 2000 Election.....	page 55
Appendix C. Computerized Statewide Voter Registration List Requirements	page 57
<i>Endnotes</i>	page 61



INTRODUCTION

THE HELP AMERICA VOTE ACT OF 2002

In an effort to correct the problems encountered in Florida during the November 2000 presidential election, the United States Congress in October 2002 enacted the Help America Vote Act of 2002 (HAVA), P.L. 107-252 (42 U.S.C. § 15301 *et seq.*). Applicable to all Federal elections held in the United States, HAVA requires or authorizes the following:

1. Creates standards for all voting systems used by the States.
2. Requires voting systems to be accessible to individuals with disabilities and those using alternative languages.
3. Requires the use of provisional ballots.
4. Implements identification requirements for those who vote for the first time after registering by mail.
5. Requires States to implement a statewide voter registration database.
6. Provides for a board to establish standards for what constitutes a vote.
7. Requires States to conduct educational programs for voters and election officials.

HAVA authorizes three Federal funding programs to accomplish the various requirements in the Act. Two funding streams administered by the General Services Administration under Title I provide for payments to States for election administration improvements and replacement of punch cards and lever voting machines. The new federal Election Assistance Commission (EAC) oversees the third, and largest, HAVA funding program under Title II. The principal purpose of the funds provided through the EAC under Title II is to assist the States in meeting the new uniform and nondiscriminatory voting system, election technology and election administration requirements imposed by Title III of HAVA.

1. Section 101 of HAVA provides \$325 million in funding for the following:

- Complying with the requirements of Title III.
- Improving election administration concerning voting rights, procedures and technology.
- Educating voters concerning their rights, election procedures and voting technology.
- Training election officials, poll workers and election volunteers.
- Developing the State Plan for implementing HAVA.
- Improving, acquiring, leasing, modifying, or replacing voting systems.
- Improving polling place accessibility.
- Establishing toll-free hotlines for voters to use to report possible voting fraud and other violations of election law or to obtain information.

Pennsylvania's share of the § 101 funding is \$11,323,168.



2. Section 102 provides \$325 million in funding for the replacement of lever voting machines and punch card systems. Pennsylvania's share is \$22,916,952. HAVA authorizes an appropriation of \$4,000 per precinct to replace lever machines. However, the amount actually received from the GSA was based on an allocation of \$3,192.22 per precinct.

3. Section 251 of HAVA (Title II) authorizes \$3 billion dollars over three years for "requirements payments" to be used to meet the requirements of HAVA's Title III. Requirements payments may be used to carry out other activities to improve election administration if the State has implemented the requirements of Title III or the amount expended with respect to such other activities does not exceed an amount equal to the minimum payment amount applicable to the State under section 252(c). Pennsylvania's estimated share of the authorized Title II money is \$35,741,000 for 2003. However, Congress failed to fully fund HAVA for 2003, and Pennsylvania could receive up to \$24,000,000 in supplemental funds if Congress approves them.

The General Services Administration has already distributed the funds authorized and appropriated under Title I. However, the Election Assistance Commission (EAC) established by Congress to administer the Act generally and to distribute the requirements payments authorized under Title II has not yet been appointed. In addition, before it might receive a requirements payment under Title II of HAVA, a State must submit to the EAC a State Plan that addresses each of 13 subjects, or "elements," mandated by section 254 of HAVA. The mandated elements are:

- (1) 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.
- (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, including: the criteria to be used to determine the eligibility of such units or entities for receiving payment; and the methods to be used by the State to monitor the performance of units or entities to whom the payment is distributed.
- (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.
- (4) How the State will adopt voting system guidelines and processes that are consistent with the requirements of section 301.
- (5) How the State will establish a fund for the purpose of administering the State's activities, including information on fund management.
- (6) The State's proposed budget for activities 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 the costs of the activities required to be carried out to meet the requirements of the act; the portion of the federal payment which will be used to carry out the activities to meet such requirements; and the portion of the federal payment that will be used to carry out other activities.

- (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.
- (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.
- (9) A description of the uniform, nondiscriminatory State-based administrative complaint procedure required by section 402.
- (10) If the State received any payment under other federal funding programs, 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.
- (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 is developed and published in the *Federal Register* in accordance with section 255 in the same manner as the State plan; is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and takes effect only after the expiration of the 30-day period that begins on the dates the change is published in the *Federal Register* in accordance with section 255.
- (12) In the case of a State with a State plan in effect 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 the previous fiscal year
- (13) 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.

In developing its State Plan, a State must work with a committee of appropriate individuals, and follow a process that provides for public notice and comment.¹



OVERVIEW OF THE ADMINISTRATION OF ELECTIONS IN PENNSYLVANIA

It is evident from the summary above that HAVA will have significant impact on the administration of elections at all levels of government. In Pennsylvania, election administration occurs at three levels – at the State level by the Secretary of the Commonwealth; at the county level by the elected county commissioners or other body established by a home rule charter; and at the precinct level by the elected district election officials.

The State Level: The Secretary of the Commonwealth, who is appointed by the Governor with approval of the Senate and serves at the pleasure of the Governor, is the chief election officer of the Commonwealth and serves as the head of the Department of State. The Secretary is the custodian of the election returns for Federal, Statewide, legislative, and most judicial offices. The Secretary compiles and publishes the returns of the primary, municipal, general and special elections; and prescribes the forms of nomination petitions and nomination papers, campaign expense reporting forms, voter registration applications and all other forms and records required by the Pennsylvania Election Code. The Secretary is also responsible for examining voting machines and electronic voting systems before they might be used for voting in the Commonwealth. He receives and determines the sufficiency of nomination petitions, nomination certificates, and nomination papers of candidates for Federal, State and certain political party offices; certifies the names of such candidates to the county boards of elections for primaries and elections; and issues certificates of nomination and election to successful candidates unless otherwise prescribed by law. The Secretary administers the campaign expense reporting laws and receives reports from county boards of elections on various issues; may demand such additional reports on special matters as he might deem necessary; and prescribes the form and wording of constitutional amendments to be submitted to the electors of the State at large. He is responsible for designing, implementing and administering the Statewide Uniform Registry of Electors (SURE) and for prescribing regulations related thereto.

Until the passage of the National Voter Registration Act of 1993 (NVRA) and the corresponding Pennsylvania Voter Registration Act (PVRA) in 1995, the Department's role in elections was largely ministerial, and it had little authority over the county boards of elections and registration commissions. With the passage of the various election reform legislation over the last decade, including the NVRA; the PVRA; Act No. 2002-3 (codifying the PVRA and establishing the Statewide Uniform Registry of Electors); and the Help America Vote Act of 2002 and the corresponding Pennsylvania law, Act No. 2002-150, the trend has been toward granting the Secretary more authority over election administration in the Commonwealth.

The County Level: Under the Pennsylvania Election Code, the county commissioners or other officers who perform the duties of the county commissioners serve as the county board of elections and the voter registration commission. There are three county commissioners elected to four-year terms. Because a voter may vote for only two candidates, elected minority party representation is virtually assured. In home rule counties, the county board and voter registration commission are established under the home rule charter. Home rule counties also provide for minority party representation. The bulk of the responsibilities for election administration fall on the county officials. They are responsible for accepting the nomination documents of candidates for county and municipal offices, and insuring that ballots are accurately printed and voting



systems are programmed correctly. They select and equip polling places; purchase all required voting equipment; issue certificates to watchers; train district election officers; receive results when the polls close; canvass results; and issue official election results to the public.

The Precinct Level: In each polling place on Election Day in every precinct in Pennsylvania, an elected judge of election and elected majority and minority inspectors are responsible for insuring that the correct legal procedures are followed at the polling place. These officials are responsible for opening the polls; processing voters; after the polls close, counting ballots both on the voting system used in the precincts and absentee ballots that have been sent to the precinct for tabulation; and certifying and delivering the election results to the county board of elections

THE PENNSYLVANIA GENERAL ASSEMBLY'S RESPONSE TO HAVA

The Pennsylvania General Assembly in December 2002 enacted Act 2002-150, which amended the Pennsylvania Election Code to include several provisions designed to comply with HAVA. These amendments also have the effect of making those rules under HAVA applicable to both Federal and State elections in the Commonwealth.

Among other things, Act 150:

- (1) Delineates requirements for the county boards of election to process provisional ballots.
- (2) Provides for voter identification requirements for those that vote in a precinct for the first time (regardless of the method used to register).
- (3) Specifies procedures to be followed when complaints are received under Title III of HAVA.
- (4) Creates the Voting Systems Development Board to determine what constitutes a vote on voting systems used in the Commonwealth.
- (5) Establishes a State Plan Advisory Board to advise the Secretary of the Commonwealth regarding development of the State Plan.

THE STATE PLAN ADVISORY BOARD

As required by HAVA and Act 150, the Secretary of the Commonwealth on February 27, 2003 convened the State Plan Advisory Board (Board) to advise the Secretary in the development of the State Plan. The Board made its recommendations to the Secretary on May 12, 2003. The Secretary has incorporated many of the Board's recommendations into the State Plan.



THE PENNSYLVANIA STATE PLAN

As required by section 255 of HAVA and Act 150, the Secretary of the Commonwealth developed this State Plan of the Commonwealth of Pennsylvania through the State Plan Advisory Board. It is the objective of this Plan to modernize Pennsylvania's voting systems, guarantee that all registered electors have the opportunity to vote, and ensure that voting systems provide equal opportunities and are easy to use. The State Plan has been written with the goal of ensuring that the citizens of the Commonwealth are provided the most fair and equitable election system possible.

A Preliminary State Plan was completed on June 28 and made available for public inspection and comment for a period of 30 days,² as required by section 256 of HAVA.³ The Secretary of the Commonwealth held public hearings during the 30-day comment period. Hearings were held on July 7, 2003, in Reading, Berks County, for the central region of Pennsylvania; in Pittsburgh, Allegheny County, on July 9, 2003, for the western region of Pennsylvania; and in Philadelphia on July 14, 2003, for the eastern part of the Commonwealth. Witnesses included representatives of various disability and alternative language advocacy groups; county election directors; and representatives of citizen action groups, including Common Cause/Pennsylvania and the Pennsylvania League of Women Voters. A complete list of witnesses is included in the State Plan as Appendix A. In addition, Secretary Cortés met with various advocacy groups on July 17, 2003 to discuss their participation in implementation of the Pennsylvania State Plan. This meeting included representatives from Common Cause of Pennsylvania, the Leadership Council on Civil Rights, the Disabilities Law Project, the United Cerebral Palsy Association, the League of Women Voters, the American Civil Liberties Union, and others.

Witnesses who presented testimony at the hearings were concerned about various issues, including increased accessibility for polling places; the lack of information relative to accessibility standards for polling places; time frames specified in the plan for conducting voter education; criticism of using direct recording electronic voting systems without a "voter verifiable ballot"; increased access for alternative language voters; the availability of voter education materials in alternative languages; and increased participation by advocacy groups in the development of programs and information to be distributed under HAVA.

As required by HAVA, the Commonwealth has considered all public comment and taken all comments into account before submitting this State Plan to the EAC. The Commonwealth has incorporated into the State Plan many of the concerns expressed in the hearings and received in writing. Copies of testimony and written submissions are available by contacting the Department of State through the Secretary of the Commonwealth, Room 302, North Office Building, Harrisburg, PA 17120.



IMPLEMENTATION OF HAVA REQUIREMENTS

As it works to implement the State Plan and the requirements of HAVA, the Department is committed to working closely with county administrators and stakeholders, including the various advocacy groups for individuals with disabilities, college and high school students, alternative language voters, senior citizens, and non-partisan organizations. Specifically, the Department plans to involve county officials and interested individuals, groups and organizations in activities such as the determination of polling place accessibility; the assessment of voting system accessibility; the development of voter education programs and materials; the development of poll worker training; the design of provisional ballots; and the development of websites and polling place information.

The goals and principles of the entire effort of the Commonwealth reflected in this State Plan are based on the concept that all voters are entitled to the right of full participation in the election process and to cast their votes independently and privately. To this end, the Commonwealth is committed to involving in the planning process both stakeholders and election administrators. Education programs will be targeted at all citizens in all of the communities of the Commonwealth. Election officials will receive training in all aspects of election administration, including voting accessibility and procedures for accommodating the needs of all voters.

Those groups and citizens who expressed concerns about the involvement of the public in implementing HAVA in the Commonwealth of Pennsylvania can be confident in the promise that the public will have a prominent role in both the planning and execution of the State Plan, as well as in the ongoing evaluation and assessment of Pennsylvania's compliance with HAVA and the achievement of the Commonwealth's goal to guarantee that all voters of Pennsylvania have the opportunity to participate fully in the election process and to cast their votes independently and privately.



ELEMENTS OF THE STATE PLAN

STATE PLAN ELEMENT 1

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 Section 254(a)(1) (42 U.S.C. § 15404(a)(1))

The requirements imposed upon the States by Title III of HAVA are "minimum requirements."⁴ HAVA permits States to establish election technology and administration requirements that are stricter than the requirements established by Title III, so long as they are not inconsistent with Federal requirements.⁵ In addition, the specific choices on the methods of complying with the requirements of Title III are "left to the discretion of the State."⁶

The requirements mandated by Title III of HAVA are divided into three sections – section 301 (relating to voting system standards); section 302 (relating to provisional voting and voting information requirements); and section 303 (relating to computerized statewide voter registration list requirements and requirements for voters who register by mail). Within each of those sections of Title III are various subsections. For purposes of organizational clarity, this State Plan addressing Element 1 follows the organization of Title III.

VOTING SYSTEMS STANDARDS (HAVA § 301)

Section 301(d) of HAVA requires, no later than January 1, 2006, that all voting systems used in elections for Federal office meet certain requirements delineated below.

- Each voting system used in a Federal election on or after January 1, 2006 must permit the voter to (1) verify privately and independently the votes selected before casting a ballot and to privately and independently be able to change or correct a ballot before it is cast (including receiving a replacement ballot); (2) notify the voter of an over-vote (casting votes for more candidates than allowed); (3) notify the voter of the effect of over-voting, *i.e.*, the vote for that office will not be counted; and (4) provide the voter with the opportunity to correct the ballot, if he or she has overvoted. These requirements mandate that a county using a paper based electronic voting system must use precinct tabulators instead of central count tabulators, thus precluding the use of paper-based central count electronic voting systems (except as noted below).
- Counties might continue to use central count paper-based voting systems, including the paper-based absentee balloting systems (that all counties currently use), if the system is designed to preserve voter confidentiality and the Commonwealth or its counties develop and deploy voting-system specific voter education programs that inform voters of the



effect of over voting and instruct voters on how to correct a ballot before it is cast (including instructions on obtaining a replacement ballot).

- All voting systems must meet all requirements of alternative language access of section 203 of the Voting Rights Act of 1965 (42 U.S.C. § 1973aa-1a).
- Voting systems must be accessible to voters with disabilities, including voters with visual impairment, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters. According to HAVA, this requirement is met by providing at least one direct recording electronic (DRE) voting unit, or other voting system equipped for individuals with disabilities at each polling place.
- All voting systems must (1) produce a record with an audit capacity (the paper record produced must be available as an official record for purposes of a recount); (2) produce a permanent paper record with a manual audit capacity; (3) allow the voter to correct any error before the permanent paper record is produced; and (4) meet FEC guidelines (§ 3.2.1) for voting system error rates (errors attributable *only* to system errors, and not an act of the voter) that are in effect at the time of the HAVA's enactment (October 29, 2002).

Finally, HAVA requires that each State 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."⁷

PENNSYLVANIA'S VOTING SYSTEMS AND ACTIONS PLANNED BY THE COMMONWEALTH TO COMPLY WITH SECTION 301 OF HAVA

Summary: Pennsylvania utilized three types of voting methods in the November 2000 election (the base year that HAVA establishes). Of the 9,418 precincts existing in Pennsylvania in November 2000, 0.7% used paper ballots; 65.2% used lever voting machines; and 34% used electronic voting systems. The electronic voting systems used in Pennsylvania include punch cards, optical scan systems and direct recording electronic (DRE) devices. See Appendix B for a breakdown of voting methods used in Pennsylvania at the November 2000 Election.

Commonwealth's Planned Actions:

- Unless the General Assembly of Pennsylvania should enact laws otherwise providing, the Commonwealth plans to leave decisions regarding the replacement or upgrading of voting systems to the prerogative of the governing authorities of the Commonwealth's 67 counties – provided, of course, that those decisions are consistent with the requirements of Federal and Pennsylvania law.
- The Commonwealth plans to recommend to the governing authorities of counties that have not done so that they procure a HAVA compliant DRE voting system that provides



full compliance with the voting system requirements of Federal and State laws. Pennsylvania plans to enter into one or more State contracts with various DRE vendors by which counties might purchase HAVA compliant DRE devices at a lower cost than individual counties would likely incur in purchasing from vendors directly.

- The Commonwealth plans to structure its funding programs and decisions in a manner that encourages county authorities to purchase HAVA compliant DRE systems. The Commonwealth will make Title II Federal funds available to counties to purchase HAVA compliant DREs and will provide up to 100% of the cost of purchasing such systems depending on the availability of Federal funds and prudent purchase of machines. If a county purchasing the HAVA compliant DRE system has received Title I funds provided by section 102 of HAVA, the amount of the Title II reimbursement for DRE purchases would be reduced by the dollar amount received under section 102. Counties that choose not to purchase a DRE system would receive up to 50% of the cost of purchasing a new voting system, depending on the availability of Federal funds. If a county that purchases a voting system other than a HAVA compliant DRE system has received Title I funds under section 102 of HAVA, the amount of the Title II reimbursement for the voting system purchase would be reduced by the dollar amount received under section 102. The Commonwealth plans to encourage the procurement of HAVA compliant DRE systems in part because section 301(a)(3)(B) of HAVA effectively obliges all counties to purchase at least one DRE device for each precinct to accommodate individuals with disabilities.⁸ Thus, the Commonwealth believes that the purchase of DRE machines for all voters would be the most efficient use of Federal, State and local funds.
- The Commonwealth plans to encourage counties that decide to use an optical scan or punch card electronic voting system to procure precinct scanners, rather than opting for central count systems with a voter education program as HAVA permits.
- The Commonwealth plans to request a waiver authorized by section 102(a)(3)(B) of HAVA⁹ to postpone replacement of lever machines and punch card systems. The effect of the waiver would be to require replacement of the voting systems no later than the Federal elections held after January 1, 2006, instead of by January 1, 2004. The waiver is necessary because the Commonwealth must await action of the EAC on what constitutes a HAVA compliant voting system. In addition, each HAVA compliant voting system will have to be reviewed and examined to determine compliance with Pennsylvania law. The Commonwealth plans to work aggressively to expedite the purchase of the new voting systems by the counties before January 1, 2006, but does not believe that it will be physically possible for counties to procure new voting systems for almost 9,000 precincts, train elections officials to correctly operate them, and expect voters to use them within the next five to nine months.

The Department heard testimony at public hearings supporting the use of DRE machines only if they include "voter verifiable ballots," which allegedly provide a paper record of how the voter has voted. The paper ballot produced by the DRE would be deposited into a ballot box upon registering a vote on the DRE and before leaving the voting booth. It is the opinion of the Department of State that current Pennsylvania law does not address the use of such a ballot. Therefore, unless the EAC should interpret HAVA to require a "voter verifiable ballot," or the



Legislature should amend the Pennsylvania Election Code to require one, the Department does not believe it to be within the statutory scheme to permit the use of such a DRE system in Pennsylvania.

Voting Methods Used in Pennsylvania

1. Paper Ballots

Summary: Sixty-six precincts in five Pennsylvania counties used traditional paper ballots in the November 2000 election. HAVA does not mandate the discontinuation of paper ballots, provided that any county choosing to keep paper ballots must implement a voter education program that notifies voters of the effect of over-votes and instructs them how to correct errors. In addition, a county choosing to keep paper ballots is still required to install a disabled-accessible voting system in each polling place for those voters who are unable to vote with a pencil and paper.

Commonwealth's Planned Action: The Commonwealth plans to provide Federal funds to reimburse those counties using paper ballots that purchase a HAVA compliant DRE voting system. Counties that decide to procure a DRE system would have to meet the Pennsylvania constitutional requirement that the voters of those counties approve the use of an electronic voting system through referendum.¹⁰

2. Lever Voting Machines

Summary: Sixty-five per cent of the precincts in 26 counties in Pennsylvania used lever voting machines at the November 2000 election. (See Appendix B.) Two of these counties, Mercer and Philadelphia, have since purchased DRE systems. Because HAVA requires that all voting systems have a manual audit capacity, the 24 counties now using lever machines must replace them. There were 4,362 qualifying precincts in the 24 counties that used lever machines in November of 2000 and 1,781 qualifying precincts in Mercer and Philadelphia Counties.

Commonwealth's Planned Action: The Commonwealth plans to encourage the 24 counties that currently use a lever machine voting system to replace that system with HAVA compliant DREs, instead of choosing other options. However, those counties do have the option to procure an optical scan electronic system using precinct tabulation or a central count system with an education program. Regardless of the system that a county might choose to replace its lever voting system, the Commonwealth plans to distribute the appropriate amount of funds received under section 102 of HAVA from the General Services Administration to these counties when they replace their lever machines.

3. Electronic Voting Systems

a. Punch Card Electronic Voting Systems

Summary: Eleven counties in Pennsylvania used punch cards in 1,030 precincts in the November 2000 election. Although HAVA makes funding available to counties to replace punch card electronic systems, it does not mandate the discontinuation of punch card electronic



systems, provided that any county choosing to keep such a system either install a precinct tabulator at each polling place or implement a voter education program specific to punch card voting that notifies voters of the effect of over-votes and instructs them how to correct errors. In addition, a county choosing to keep a punch card electronic system has to install a disabled-accessible voting system in each polling place for those voters who are unable to vote with punch card ballots.

Commonwealth's Planned Action: The Commonwealth plans to encourage those counties using central count punch card electronic voting systems to purchase HAVA compliant DRE systems, instead of moving to tabulation of punch cards in the precincts or an educational program (see above) or by purchasing another paper based system (optical scan). Regardless of the system a county should choose, the Commonwealth plans to distribute to those counties that replace their punch card voting systems the appropriate amount of funds as prescribed by section 102 of HAVA.

b. Optical Scan Electronic Voting Systems

Summary: All 24 Pennsylvania counties using optical scan voting systems in 1,257 precincts in November 2000 used the central-count method of tabulating ballots. As with paper ballots and punch card electronic voting systems, HAVA does not mandate the discontinuation of optical scan voting systems, provided a disabled-accessible voting system as described in section 301(a)(3) is available in the polling place for those voters who are unable to vote with optical scan ballots. Jurisdictions that do not wish to replace their optical scan voting systems have two options: (1) they may retain those systems by establishing a voter education program that notifies voters of the effect of over-votes and instructs voters on how to correct errors; or (2) they may place a precinct tabulator in each precinct to alert voters to over-votes and immediately allow them the opportunity to correct the error.

Commonwealth's Planned Action: The Commonwealth intends to encourage the 24 Pennsylvania counties that use optical scan electronic systems to procure HAVA compliant DRE systems, instead of using precinct tabulators or an education program (as described above). However, if a county should continue to use an optical scan system, the Commonwealth proposes that funding be provided to those counties at a lesser rate than they would have received for purchasing a DRE system.

c. Direct Recording Electronic (DRE)

Summary: Six counties in Pennsylvania used DREs in November 2000, but most (if not all) of these systems will need upgrades for HAVA compliance. In addition, the systems purchased since the November 2000 election by Mercer and Philadelphia Counties will also require upgrades. None of the systems utilized in these counties complies with the disabled accessibility requirements of HAVA. Consequently, the Department of State might have to review all approved systems to determine whether they have a manual audit capacity and to ensure that they are accessible to individuals with disabilities.

Commonwealth's Planned Action: To assist those six counties that were using DREs in the November 2000 General Election (Dauphin, Berks, Greene, Beaver, Montgomery, and Potter) in



upgrading their DREs to comply with the requirements of HAVA, the Commonwealth plans to make Federal funds available to such counties. In addition to the six counties that used a DRE voting system in November 2000, two counties – Mercer and Philadelphia – have since implemented a DRE voting system and, therefore, qualify for the reimbursement under section 102 (see discussion above regarding replacement of lever voting machines). Although Mercer and Philadelphia Counties qualify for reimbursement under section 102 of HAVA, they will be eligible to receive Federal funds for upgrading their current DRE systems to meet HAVA standards.

4. Absentee Balloting Systems

Summary: In Pennsylvania, all absentee ballots are cast on paper, punch card, or optical scan ballots – depending on the type of voting system used in the county. Because these absentee voting methods fall within the scope of section 301(a)(1)(B) of HAVA,¹¹ all counties of the Commonwealth will be required to implement an educational program for absentee voters to inform them of the effect of over-voting and instruct them of the method of correcting errors on their ballots.

Commonwealth's Planned Action: The Commonwealth plans to encourage all counties using optical scan electronic voting systems to continue using them for absentee ballots. The Commonwealth plans to assure that an education program consistent with section 301(a)(1)(B) of HAVA is conducted for mail-in absentee ballots.

5. Uniform Definition of What Constitutes a Vote

In December 2002, the General Assembly established within the Department of State the Voting Standards Development Board. Consistent with the mandate of section 301(a)(6) of HAVA,¹² this seven-member board was required to develop uniform and nondiscriminatory standards that define what constitutes a valid vote cast through a paper ballot and what constitutes a valid vote through each type of electronic voting system used in the Commonwealth. The Voting Standards Development Board was required to adopt standards by July 1, 2003, and the Department must publish them as a notice in the *Pennsylvania Bulletin*.¹³ The Voting Standards Development Board met its statutory deadline by adopting standards, and the Department of State will publish the standards in the *Pennsylvania Bulletin* on August 2, 2003.

This mandate from the General Assembly assures that Pennsylvania will comply with section 301(a)(6) of HAVA well ahead of the deadline of January 1, 2006. These standards will then serve as guidance for all Pennsylvania counties in determining what constitutes a valid vote cast on their voting systems. Under section 204(d) of the Election Code,¹⁴ the Voting Standards Development Board might meet to update the standards as necessary.

6. Accessibility of Voting Systems for Electors with Disabilities

Summary: In accordance with section 301(a)(3) of HAVA, all voting systems used in the Commonwealth must be accessible for individuals with disabilities. Since the mid 1980s, all counties under the federal Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C.



§ 1973ee *et seq.*) have had to insure that polling places are accessible to those electors who are over the age of 65 or have disabilities or to provide an alternative means of voting. However, that act applied to the parking facilities and the paths to the polling places and did not apply to voting systems. Under section 301(a)(3)(B) of HAVA, all counties will need to insure that each precinct in the county will have at least one DRE or other system that meets this requirement.¹⁵

Commonwealth's Planned Action:

- The Commonwealth plans to use part of its requirements payment to reimburse counties that purchase DRE devices for use by individuals with disabilities. Counties purchasing other types of systems would receive partial reimbursement. The Commonwealth plans to make Federal funds available to the counties for purchasing an accessible voting system through county grants.
- The Commonwealth plans to allow counties to choose to comply with section 301(a)(3) of HAVA through any of the following options: (i) procurement by the county government of a disabled-accessible voting device selected by an agency of the Commonwealth; (ii) procurement by the county government of a county-selected disabled-accessible device; or (iii) upgrading of the existing county voting devices, provided that the electronic voting system is certified by the Department of State.
- The Commonwealth plans to enter into contracts to procure disabled-accessible voting devices. In doing so, the Commonwealth plans to include county election personnel and disability groups in the review and selection process. The Commonwealth plans to use this collective procurement process to procure (i) the voting device; (ii) programming/tabulation hardware and software; and (iii) county personnel, poll worker, and voter training materials.
- The Commonwealth plans to ask counties to conduct a survey of all polling places in the Commonwealth to determine their accessibility under the guidelines issued by the Department of State under the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973gg *et seq.*).
- In an effort to improve polling place accessibility, the Secretary of the Commonwealth plans to form an advisory task force composed of advocacy groups for individuals with disabilities, alternative language minorities and county representatives to review the current accessibility guidelines used in the Commonwealth, revise them if necessary, and develop procedures to assist counties in increasing the number of accessible polling places in each county. The Commonwealth plans to make Federal funds available to counties to increase the accessibility of their polling places.

7. Alternative Language Accessibility

Summary: HAVA requires that all voting systems provide alternative language accessibility as provided by section 203 of the Voting Rights Act of 1965 (42 U.S.C § 1973aa-1a). Section 203 applies to those jurisdictions that have a single language minority which is 5% or more of the



voting age population residing within the jurisdiction (i.e., county); and the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate, as determined by the Census Bureau. Currently, Philadelphia County is the only jurisdiction in Pennsylvania that is mandated to comply with the requirements of section 203. However, applying other provisions of the Voting Rights Act, including section 2¹⁶, 4(e)¹⁷ and 208¹⁸, the U.S. District Court for the Eastern District of Pennsylvania held earlier this year that Berks County must provide all election-related materials in English and Spanish in every precinct in which the registered number of Hispanic voters constitutes more than five percent of the registered voters, and must have translators available for at least part of the day in many of those precincts. See *United States v. Berks County*, 250 F.Supp.2d 525 (E.D. Pa. 2003).

Commonwealth's Planned Action: The Commonwealth plans to assist counties in pursuing ways to make ballots, polling place information and notices, and other voter information available in alternative languages, as well as acting as a clearinghouse for information. The Commonwealth plans to assist counties in obtaining the assistance of interpreters, translation services, and voter information printed in alternative languages to assist counties that have precincts in which significant numbers of alternative language minorities are assigned to vote. The Commonwealth plans to work with representatives of alternative language advocacy groups and county representatives to develop these resources. The Commonwealth also plans to make Federal funds available to counties that pursue alternate language accessibility.

**PROVISIONAL VOTING AND VOTING INFORMATION
REQUIREMENTS (HAVA § 302)**

Section 302 of HAVA requires States to implement provisional voting by January 1, 2004. Under this Congressional mandate, if an individual declares that he or she is a registered voter in the jurisdiction in which the individual desires to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, the individual must be permitted to cast a "provisional ballot."

To implement the provisional voting requirement, States must:

- (1) Require an election official at the polling place to notify the individual that he/she may cast a provisional ballot.
- (2) Require that the individual be permitted to cast a provisional ballot at the polling place upon the execution of a written affirmation by the individual before an election official at the polling place affirming that the individual is a registered voter in the jurisdiction in which the individual desires to vote and eligible to vote in that election.
- (3) Require an election official at the polling place to transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual to an appropriate State or local election official for prompt verification.



- (4) Provide that if the appropriate election official determines that the individual is eligible under State law to vote, the provisional ballot shall be counted as a vote.
- (5) Require that, at the time that the individual casts a provisional ballot, an election official must give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain whether his/her ballot was counted and, if the ballot was not counted, the reason that it was not counted.
- (6) Require an appropriate election official to establish a free access system that any individual who casts a provisional ballot might access to discover whether the vote was counted and, if the vote was not counted, the reason the vote was not counted.¹⁹

In addition, section 302(b)(1) of HAVA requires States to assure that election officials cause voting information to be publicly posted at each polling place on the day of each election for Federal office. Mandatory voting information includes:

- (A) A sample version of the ballot that will be used for that election.
- (B) Information regarding the date of the election and the hours during which polling places will be open.
- (C) Instructions on how to vote, including how to cast a vote and how to cast a provisional ballot.
- (D) Instructions for mail-in registrants and first-time voters under § 303(b) of HAVA.
- (E) General information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated.
- (F) General information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.²⁰

1. Provisional Voting in Pennsylvania

Summary: The General Assembly in December 2002 amended the Pennsylvania Election Code to conform Pennsylvania law to section 302 of HAVA. The Legislature amended section 1210 of the Election Code (relating to manner of applying to vote; persons entitled to vote; voter's certificates; entries to be made in district register; numbered lists of voters; challenges) to provide for provisional voting beginning December 9, 2003. Under new section 1210(a.4), "an individual who claims to be properly registered and eligible to vote at the election district but whose name does not appear on the general register and whose registration cannot be determined by the poll workers or county election officials [must be] permitted to cast a provisional ballot."²¹ In addition, individuals who cannot produce identification as required by section



1210(a), or who seek to vote pursuant to a judicial order, are permitted to vote only by provisional ballot.²²

Section 1210(a.4)(2) of the Election Code requires a voter, before casting a provisional ballot, to sign an affidavit that is consistent with the requirement of section 302(a)(2) of HAVA. The affidavit must specify the individual's name, date of birth, address of registration, and a sworn statement that, at the time the individual registered, he resided in the municipality and county in which he registered.²³ A provisional voter also must declare that the provisional ballot he is casting is the only ballot that he is casting in the election, and the judge of elections and the minority inspector in the polling place must sign the affidavit.²⁴

Provisional voters must place their ballots in a secrecy envelope and a provisional ballot envelope, the outside of which they must sign.²⁵ As section 302(a)(5) of HAVA requires, the individual casting the provisional ballot must be informed at the polling place of the free access system established by the Department under section 1210(a.4)(8) of the Election Code that he/she might use after the election to determine whether his/her ballot was counted.

Consistent with section 302(a)(3) of HAVA, provisional ballots must remain sealed in the provisional ballot envelope for return to the county board of elections.²⁶ The procedures for promptly determining whether provisional ballots should be counted track those outlined in HAVA. County boards of elections must determine within three business days after the election whether the provisional ballot will be counted.²⁷ One authorized representative of each candidate who is an elector in the county must be permitted to remain in the room where the determination is made as to whether to count the provisional ballot.²⁸

If the individual casting the provisional ballot is determined to be registered and eligible to vote in the election district where the ballot was cast, the county board of elections must compare the signature on the provisional ballot envelope with the signature on the voter's registration record. If the signatures are determined to be genuine, the ballot will be counted.²⁹ If the board determines that the individual casting the provisional ballot is not registered, the provisional ballot will not be counted; and the ballot will remain in the provisional ballot envelope and marked rejected as ineligible.³⁰ If the individual casting the provisional ballot is determined to be eligible to vote, but not in the election district where the ballot was cast, the county board of elections will open the envelope and count only that portion of the ballot that the individual would have been eligible to vote in his proper election district.³¹

As required by section 302(a)(5)(B) of HAVA,³² Act 150 requires the Department of State to establish an Internet website and toll-free telephone number to permit provisional voters to determine whether their ballot was counted.³³ If the provisional ballot was not counted, the free access system will provide the voter the reason that the ballot was not counted.³⁴ Security and confidentiality of the information contained in the free access system must be assured as required by section 302(a) of HAVA, and information about individual provisional ballots will be restricted to the person who cast the ballot.³⁵

Finally, HAVA provides that voters who vote as a result of a Federal or State court order or any order extending the time established for closing of the polls by State law in effect 10 days



before the election, may vote only by casting a provisional ballot. These ballots will be separated and held apart from other provisional ballots.³⁶

Commonwealth's Planned Action:

- The Commonwealth plans to use funds received from GSA under section 101 of HAVA for website development and establishment and operation of the toll free line required by section 1210(a.4) of the Election Code (added by Act 150).³⁷
- The Commonwealth plans to include as part of its Statewide Uniform Registry of Electors (SURE) system an automated and efficient process that would work in conjunction with the website to enable electors who vote by provisional ballot to track the status of their ballot and for the counties to comply with the provisional ballot processing requirements of HAVA.
- In an effort to create standardized statewide procedures for provisional balloting, the Secretary of the Commonwealth, in consultation with representatives of the county boards of elections and advocacy groups, plans to prescribe the format of the provisional ballot for all voting systems and to prescribe the procedures to be followed in processing and tabulating such ballots. The procedures planned by the Secretary of the Commonwealth would include a notice containing instructions on how to cast a provisional ballot specific to the provisional voting method used by the county. Instructions would be posted in accordance with the applicable provisions of HAVA. The Commonwealth also plans to study ways to provide a voter registration application with the provisional ballot or to design the ballot envelope in such a way as to contain an application for registration.
- The Commonwealth, through the Department of State and in consultation with county representatives, plans to prescribe the content of a Voting Rights and Penalty Card, including uniform language designated for posting general information on voting rights under applicable Federal and State laws; information on the right of an individual to cast a provisional ballot; instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and general information on Federal and State laws regarding prohibitions on fraud and misrepresentations.

2. Voting Information Requirements

Summary: Section 302(b) of HAVA³⁸ requires the appropriate State or local official to publicly post certain voting information at each polling place on Election Day. This information must include: a sample version of the ballot; information regarding the date of the election and the hours during which polling places will be open; instructions on how to vote, including how to cast a vote and how to cast a provisional ballot; instructions for mail-in registrants and first-time voters under section 303(b) of HAVA³⁹; general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to



have been violated; and general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

The Pennsylvania Election Code provides specifically for the public posting of some of the voting information mandated by section 302(b) of HAVA. However, section 1202 of the Election Code explicitly requires county boards of elections to prepare "full instructions for the guidance of electors ... to be printed in large clear type on separate cards to be called cards of instruction."⁴⁰ These cards of instruction and notices of penalties are required by the Election Code to be "posted in each voting compartment, and not less than three such cards and notices of penalties, and not less than five specimen ballots..., [must] be ... posted in or about the voting room outside the enclosed space."⁴¹ In addition, the law requires local elections officials to give available cards of instruction, notices of penalties and specimen ballots to any elector who might request one.⁴²

The cards of instruction that Pennsylvania law requires to be posted in the polling places may include within them, or separately in similar large clear type, such other information that might be "deem[ed] advisable."⁴³ In the judgment of the Secretary of the Commonwealth, sections 1202 and 1209(a) of the Election Code effectively command the county boards of elections to require public posting in their polling places of *all* of the voting information mandated by section 302(b) of HAVA. In other words, where Federal law requires the public posting of particular information in the polling places on Election Day, it is "deemed advisable" as a matter of Pennsylvania law that the mandated postings be made by the county boards of elections and the local boards of elections.

Commonwealth's Planned Action:

- The Commonwealth, with its 67 counties, plans to follow the dictates of section 1210 of the Election Code as amended by Act 2002-150, which fully implement HAVA requirements.
- The Commonwealth, through the Department of State and in consultation with county representatives and community stakeholders, plans to prescribe the contents of a notice for posting at each polling place that details the acceptable forms of identification required of voters who appear to vote in an election district for the first time. The Department plans to work cooperatively with counties to develop the format of the notice to facilitate re-production by the county and posting at each polling place for elections occurring after January 1, 2004.

**COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST
REQUIREMENTS AND REQUIREMENTS FOR VOTERS
WHO REGISTER BY MAIL (HAVA § 303)**

Section 303 of HAVA contains two general requirements. First, section 303(a) requires States, by January 1, 2004 (or, if a waiver is requested by the State, no later than January 1, 2006), to implement a computerized statewide voter registration list with computerized list maintenance and mandatory verification of voter registration information.⁴⁴ Second, subsection



(b) of HAVA's section 303 requires States to implement certain procedures for voters who register by mail no later than January 1, 2004.⁴⁵

1. Computerized Statewide Voter Registration List Requirements (HAVA § 303(a))

Section 303(a)(1) of HAVA requires each State to implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State.⁴⁶ The computerized list must:

- (i) Serve as the single system for storing and managing the official list of registered voters throughout the State.
- (ii) Contain the name and registration information of every legally registered voter in the State.
- (iii) Assign a unique identifier to each legally registered voter in the State.
- (iv) Connect with other agency databases within the State.
- (v) Provide access to any election official in the State, including any local election official, in order to obtain immediate electronic access to the information contained in the computerized list.
- (vi) Allow voter registration information obtained by any local election official in the State to be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.
- (vii) Provide such support as may be required so that local election officials are able to enter information as described in clause (vi).
- (viii) Serve as the official voter registration list for the conduct of all elections for Federal office in the State.⁴⁷

Section 303(a)(2)(A) of HAVA requires that elections officials perform maintenance on the computerized list on a regular basis.⁴⁸ The list maintenance must be conducted in a manner that ensures that "(i) the name of each registered voter appears in the computerized list; (ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and (iii) duplicate names are removed from the computerized list."⁴⁹

Removal of voters from the computerized list must be accomplished in accordance with the National Voter Registration Act of 1993 (NVRA), 42 U.S.C. § 1973gg *et seq.*⁵⁰ In removing names from the computerized list by reason of death, HAVA requires Pennsylvania to coordinate the computerized list with the Department of Health.⁵¹ In addition, HAVA requires that election



officials provide adequate technological security measures to prevent the unauthorized access to the computerized list.⁵²

HAVA mandates that State election systems include provisions to ensure that voter registration records in the State are accurate and are updated regularly.⁵³ States must have a system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters that is consistent with the NVRA,⁵⁴ and includes safeguards to ensure that eligible voters are not removed in error from the official list by reason of a failure to vote.⁵⁵

In addition, to assure that voter registration information is accurate before a name is added to the computerized registration list, section 303(a)(5)(A)(i) of HAVA requires that an application for voter registration for an election for Federal office not be accepted or processed by a State unless the application includes the applicant's driver's license number or, if the applicant is not a licensed driver, the last four digits of the applicant's Social Security number.⁵⁶ It is the responsibility of the State to determine whether the information provided by an individual is sufficient to meet the requirements of the law.⁵⁷

To further assure that voter registration information is accurate, HAVA requires the State's chief State election official and the official responsible for the State motor vehicle authority to enter into an agreement to match information in the database to the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable the State officials to verify the accuracy of the information provided on applications for voter registration.⁵⁸

2. Requirements for Voters Who Register By Mail (HAVA § 303(b))

Section 303(b)(1) of HAVA requires States, in a uniform and nondiscriminatory manner, to require an individual to meet several requirements if he (i) registered by mail; and (ii) has not previously voted in an election for Federal office in the State, or has not previously voted in a Federal election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list that complies with section 303(a) of HAVA. Subject to the exceptions described in the next paragraph, for those individuals who vote in person, the voter must present to the appropriate election official a current and valid photo identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.⁵⁹ For those who vote by mail – again, with the exceptions described below – the voter must submit the same information with his ballot.⁶⁰ Those individuals who are not able to produce required identification are entitled to cast a provisional ballot.⁶¹ These provisions are effective January 1, 2004.

First-time mail registration voters will *not* be required to present identification on Election Day or with their absentee ballots *if* – beginning with registrations submitted on or after January 1, 2003 – (a) the registrant submits the required identification with his registration; or (b) the registrant submits with his registration either a driver's license number or at least the last four digits of his or her Social Security number, and an election official is able to match the information submitted with an existing State identification record bearing the same number, name and date of birth as provided in the registration.⁶² In addition, voters who are (i) entitled to



vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. § 1973ff-1 *et seq.*); (ii) provided the right to vote by alternative ballot under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. § 1973ee-1(b)(2)(B)(ii)); or (iii) entitled to vote otherwise than in person under any other Federal law, are not required to satisfy the identification requirements of section 303(b) of HAVA.⁶³

Section 303(b) of HAVA also prescribes mandatory contents for mail-in registration forms, beginning January 1, 2004. The mail-in registration forms must include specific questions asking whether the applicant meets citizenship and age requirements to register to vote and advise the applicant not to complete the form if they answer in the negative.

HAVA requires individuals to be informed that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.⁶⁴ If an applicant for voter registration should fail to answer the questions on the mail voter registration form, the registrar must notify the applicant of the failure and provide him with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office, subject to State law.⁶⁵

3. Pennsylvania Law

a. Computerized Statewide Voter Registration List

Summary: On January 31, 2002, the Governor signed Act 3 into law. Act 3, which added chapters to Title 25 of the Pennsylvania Consolidated Statutes, established in Pennsylvania the Statewide Uniform Registry of Electors (SURE) -- a statewide voter registration system.⁶⁶ Act 3 provides for the design, development and implementation of the SURE system by the Department of State and the administration of the system by the Secretary of Commonwealth, the chief election official of Pennsylvania.⁶⁷ However, under Act 3, the county registration commissions continue to maintain their voter registration records and have sole authority for adding, modifying or deleting records.⁶⁸ The Department must implement the SURE system in all counties and full connection is required no later than January 1, 2005.⁶⁹

Prior to Act 3, voter registration administration was largely within the purview of county registration commissions elected by the voters of individual counties or appointed by other county officials or the courts. Each of Pennsylvania's 67 counties administered its own voter registration records, and county officials had virtually no means to crosscheck these records with the records of other counties.

With the passage of the NVRA and the PVRA, there were vastly expanded opportunities for citizens to apply for voter registration. The NVRA also mandated detailed requirements for voter registration administration and provided the counties with substantially more accurate and timely information, confirmed by other government agencies, regarding the relocation of voters. This substantial increase in information, and the mandate to use the information to maintain the accuracy and currency of the voter files, placed a burden on managing the increased file maintenance workloads on the county registration commissions.



Despite county advances made in response to the NVRA and the PVRA, requirements for transfers of paper documents between the counties and between State agencies and the counties, combined with the legislative interest in providing a method to discover duplicate registration records, created an interest in a statewide voter registry. Based on the findings of studies conducted by the Department from 1995-2001, the Legislature enacted the Statewide Uniform Registry of Electors (SURE) system in January 2002.

Since the summer of 2002, Pennsylvania has made significant progress in implementing SURE. Last fall, four Phase 1 counties were brought onto the system in parallel mode, during which those counties tested the system while still relying on the data in their legacy systems as the official record of voter registration. In January 2003, the four Phase 1 counties began using the SURE system in production mode as the official registration record of their counties. The Department will continue to work to improve the SURE system as testing continues into Phase 2 and before it is fully rolled out to the remaining counties during Phase 3.

i. *Computerized List Maintenance*

Summary: Like HAVA, Act 3 requires elections officials to perform maintenance on the computerized list on a regular basis. Section 1203(l) requires that a voter registration commission promptly update information contained in its registration records.⁷⁰ The same requirement for prompt updates of information in the SURE system by county commissions is contained in numerous provisions of Title 25.⁷¹ All updates must be performed in accordance with the NVRA.⁷²

Section 303(a)(2)(A)(ii)(I) of HAVA requires that, for the purpose of removing names of ineligible voters from the official list, the statewide registry must coordinate with the computerized list with State agency records on felony status.⁷³ However, under a final decree of the Commonwealth Court of Pennsylvania entered May 14, 2002 (as revised) in *Lorenzo M. Mixon, et al. v. Commonwealth of Pa., et al.*, No. 384 M.D. 1999, citizens of the Commonwealth who have been convicted of a felony may be registered to vote in the Commonwealth and may vote after they have been released from prison. Moreover, there is no provision of Pennsylvania law that requires a registration commission to cancel the voter registration of a registered voter convicted of a felony. Because Pennsylvania neither provides for the removal of voters from the voter registration rolls based on a felony conviction nor prohibits a convicted felon who has been released from prison to register to vote, section 303(a)(2)(A)(ii)(I) of HAVA currently has no application to Pennsylvania.

Both Act 3 and HAVA require that the statewide registration list be administered in coordination with the computerized list maintained by the Department of Health.⁷⁴ This requirement will be accomplished by connecting the Department of Health with the SURE system.

ii. *Technological Security of Computerized Lists*

Summary: Section 303(a)(3) of HAVA provides that the appropriate State or local official must assure adequate technological security measures for the statewide registration system. Section



1222(c)(2) of Title 25 requires the SURE system to ensure the integrity and accuracy of all registration records in the system by prohibiting unauthorized entry, modification or deletion of registration records.⁷⁵

iii. *Verification of Voter Registration Information*

Summary: Pennsylvania's Voter Registration Mail Application Form, which appears on the Department's website at www.dos.state.pa.us, meets the requirements of section 303(a)(5) of HAVA requiring a driver's license number or the last four digits of the applicant's Social Security number. If the applicant does not have either number, the instructions on the Pennsylvania VRMA form require the applicant to mark "None" in the space for the last four digits of a Social Security number. If an applicant notes on the form that he does not have either of these numbers, the SURE system must assign a unique identification number to the voter, as HAVA requires.⁷⁶

Because HAVA also requires the sharing of information among State databases for the purposes of verifying the identifying numbers submitted by an applicant, the Department of State plans to enter into an agreement with the Department of Transportation to permit the verification of driver's license numbers and the last four digits of applicants' Social Security numbers. To permit the verification of partial Social Security numbers for those applicants that provide this number instead of a driver's license number, the Department of Transportation is required by sections 303(a)(5)(B)(ii) and (C) of HAVA to enter into an agreement with the Social Security Administration. Once this capability is in place, county voter registration officials should be permitted to submit identifying numbers through the SURE system to the Department of Transportation for verification of their validity.

Commonwealth's Planned Action: Act No. 2002-3 authorizes the establishment of a central uniform registry that is HAVA compliant. (See *Appendix C.*) However, because SURE cannot be fully operational by the date specified by section 303(d)(1)(B) of HAVA – January 1, 2004 – the Commonwealth plans to request the waiver authorized by HAVA to extend the deadline for full implementation until January 1, 2006. The Commonwealth plans to use part of its requirements payments to pay for the costs of the SURE system.

b. *Requirements for Voters Who Register By Mail*

As permitted by section 304 of HAVA,⁷⁷ Pennsylvania law imposes voter identification requirements that exceed the mandate of Federal law. While HAVA requires identification only for certain first-time voters in a jurisdiction who register by mail, the Pennsylvania General Assembly in Act 150 opted to require all voters who appear to vote for the first time in an election district, present to an election officer either a form of photo identification specified by section 1210(a) of the Election Code or, if none is available, a form of non-photo identification specified by section 1210(a.1) of the Election Code. Those first-time voters who are unable to produce proper identification may vote only by provisional ballot.⁷⁸

Under Act 150, a voter can present either a photo identification or non-photo identification. Below is a list of forms of identification expressly permitted by section 1210 of the Election Code, as amended by Act 150:



Photo Identification⁷⁹

- A valid driver's license or identification card issued by the Department of Transportation.
- A valid identification card issued by any other agency of the Commonwealth.
- A valid identification card issued by the United States Government.
- A valid United States passport.
- A valid student identification card.
- A valid employee identification card.
- A valid armed forces of the United States identification card.

Nonphoto Identification⁸⁰

- Nonphoto identification or other document issued by the Commonwealth or any of its agencies showing the name and address of the voter.
- Nonphoto identification or other document issued by the United States Government or any of its agencies showing the name and address of the voter.
- A firearm permit showing the name and address of the voter.
- A current utility bill showing the name and address of the voter.
- A current bank statement showing the name and address of the voter.
- A paycheck showing the name and address of the voter.
- A government check showing the name and address of the voter.

Section 303(b)(2)(A) of HAVA⁸¹ lists forms of identification similar to those listed in Act 150. Although HAVA does not delineate examples of the "current and valid photo identification," it is the opinion of the Department that all of the types of photo identification included in Act 150 qualify. Likewise, the following items of nonphoto identification are included in both Act 150 and HAVA: "current utility bill, bank statement, government check, and paycheck." Furthermore, sections 303(b)(2)(A)(i)(II) & (ii)(II) of HAVA generally allow as a proper form of identification any "government document that shows the name and address of the voter."⁸² This provision of HAVA is almost identical to section 1210(a.1) of the Election Code, which requires election officials to accept a "nonphoto identification issued by the Commonwealth or any agency thereof," or a "nonphoto identification issued by the United States Government or agency thereof."

The deadline for implementation of section 303(b) with respect to individuals who register to vote was January 1, 2003. By that date, mail-in applicants for voter registration were to be offered the opportunity to avoid HAVA's Election Day voter identification requirement for first-time mail-registration voters by providing proper identification to voter registration officials with their voter registration applications. However, Pennsylvania law – beginning December 9, 2003 – will require *all* Pennsylvania electors voting in person for the first time in an election district to produce identification when they vote, irrespective of how they registered to vote. Consequently, the option prescribed by HAVA for mail-in registrants to avoid HAVA's Election Day identification requirement (which are not in force until January 1, 2004) has no application for Pennsylvania voters who vote in person.



In addition to the exemptions noted previously at section 303(b)(3)(C) of HAVA,⁸³ there are additional exceptions related to the identification requirements in Act 150. Because Act 150 requires identification only of a voter who "appears to vote" in an election district for the first time, Pennsylvania's strict identification requirements do not apply to first-time voters who vote through the Federal alternative ballot or other Federal law alternatives that are exempted from the first-time voter identification requirements of HAVA. Consequently, consistent with HAVA, those voters are *not* required by Pennsylvania law to produce identification when they vote for the first time in an election district.

Finally, sections 303(b)(3)(A) and (B) of HAVA⁸⁴ will apply to first-time Pennsylvania voters who vote by absentee ballot. This is so because Act 150 does *not* require voters who vote for the first time in an election district by absentee ballot under *Pennsylvania* law to provide identification with their absentee ballots. By contrast, HAVA *does* require that a voter who registered by mail and who seeks to vote *in a county* for the first time by means of an absentee ballot, must provide proper identification with his ballot, unless the voter has submitted proper identification or identifying information with his mail-in voter registration. Because Pennsylvania law is silent regarding first-time voters who do not appear in person, Pennsylvania election officials must follow section 303(b)(2)(A)(ii) of HAVA⁸⁵ for those voters. Under HAVA, an absentee voter who has registered by mail, is voting for a Federal office, and is voting for the first time in the county, must be required to submit a proper form of identification with his or her ballot. If an absentee voter does not include such identification with his or her ballot, the ballot must be treated as a provisional ballot and handled according to Pennsylvania law. However, absentee voters who have submitted acceptable identification or a valid driver's license or partial Social Security number with their voter registration application would be exempt from this requirement.⁸⁶

The Department of State plans to devise a system to identify first time voters on the district registers produced through the SURE system to assist counties and district election officials. Through such a system, the Commonwealth will strive to assure that only first-time voters are required to produce identification on Election Day or with their absentee ballots.

i. Contents of Mail-In Registration Form

Section 303(b)(4) of HAVA specifies new requirements for the contents of mail-in registration forms.⁸⁷ Section 1327(a)(1) of Title 25 requires the Secretary of the Commonwealth to prescribe the form of an official voter registration application for use in the Commonwealth and lists mandatory information that must be included on the official application. In addition, under section 1327(a)(2) of Title 25, the data required on the voter registration application may be neither more nor less than the minimum data elements permissible for Federal voter registration. Because HAVA changed the contents of the form for Federal voter registration, Pennsylvania adjusted the contents of its forms in its regulations to be consistent with HAVA. The new forms were posted on the Department of State's website in January 2003, and revised forms are in the process of being printed for distribution across the Commonwealth.



Section 183.1 of the Department of State's regulations governing the SURE system⁸⁸ specifies the contents of Pennsylvania's voter registration mail application (VRMA) form. These new requirements mandate that specific questions related to the applicants citizenship and age be included on the VRMA, in compliance with section 303(b)(4) of HAVA.⁸⁹ Section 183.1 also mandates the inclusion of the registration declarations required by section 303(b)(4)(A) of HAVA.⁹⁰

Section 303(b)(4)(A)(iv) of HAVA requires that a mail registration form include a statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, identification information must be submitted with the mail-in registration form in order to *avoid* the additional identification requirements upon voting for the first time.⁹¹ However, voters in Pennsylvania who are voting in person for the first time at an election district cannot avoid the requirement imposed by Act 150 to produce identification at the polling place by providing identification with their voter registration application. Consequently, section 303(b)(4)(A)(iv) of HAVA is largely irrelevant to Pennsylvania voters.

Commonwealth's Planned Action: The Commonwealth and its 67 counties plan to follow the dictates of section 1210 of the Election Code, which comports fully with the requirements of HAVA. The Department of State plans to be responsible for prescribing the content of the notice that will be posted at each polling place detailing the acceptable forms of identification required of voters who appear to vote in an election district for the first time. The Department will work cooperatively with counties to develop the format of the notice to facilitate re-production by the county.

The Department also plans to work with the counties and voters' groups to educate voters regarding the voter identification requirements imposed upon first-time voters by Act 150 and the rights of such voters to cast a provisional ballot in the event that they are unable to produce identification required by section 1210(a) or 1210(a.1) of the Election Code.



STATE PLAN ELEMENT 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 State Plan Element 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*

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

HAVA Section 254(a)(2) (42 U.S.C. § 15404(a)(2)).

Section 254(a)(2) of HAVA requires the Commonwealth to describe in its State Plan how it plans to distribute the requirements payments that it receives under Title II of HAVA to units of local government and other entities in the State for the purpose of meeting the requirements of Title III and, if permissible, other activities to improve the administration of elections. The provision also requires the Commonwealth to describe the criteria that it plans to use to determine the eligibility of the units of local government and other entities in the Commonwealth; and the methods it plans to use to monitor the funds that it distributes consistent with the performance goals and measures it intends to use to determine success in carrying out its plan.⁹²

The Commonwealth's goal is not only to bring each of its counties into compliance with HAVA, but also to allow them the opportunity to utilize their creativity to expand election administration improvements beyond HAVA. With limited funding available and anticipating many worthwhile projects, the Commonwealth is committed to distributing money from the requirements payment using the most equitable and cost-effective methods.

To the extent authorized by Federal law, the Commonwealth plans to agree that Federal funding allocated to a county by the Commonwealth would remain reserved for use by that county until (a) the county had completed its programs in accordance with its county plans and agreements; and (b) both the Secretary of the Commonwealth and the county board of elections have agreed that the county is in full compliance with HAVA's requirements.

When counties request funding to purchase new voting systems or upgrade existing voting systems, the Commonwealth plans to require them to substantiate the number of individual voting units purchased and to provide detailed information to the Secretary of the Commonwealth regarding planned county and/or vendor-conducted "how to vote" education programs for electors. The Commonwealth plans to require counties to determine the illustrative methods they will use, such as press releases; public service announcements; "how to vote" pamphlets; placement on county websites; newspaper advertisements; public demonstrations;



and voting demonstrations at meetings of political, civic, community, senior citizen, and disability groups.

The Commonwealth plans to require counties to provide information to the Secretary of the Commonwealth regarding vendor-conducted election staff training on operation and maintenance of the selected voting system and planned on-site vendor support for the first two elections the system is used.

COUNTY PLANS

The Commonwealth believes that it is important for the counties to play a major role in determining what measures they believe will bring the county into full compliance with HAVA and provide the best resources for its voters. To do this in a meaningful manner, the Commonwealth believes that each county will need to set forth its ideas and plans in a written format, or "County Plan," that would provide details regarding the projects the county would implement using funds from the requirements payment and what non-monetary resources the county would commit to the projects. One element of the county plans would be a description of how the county intends to maintain its current level of county funding of election administration activities. HAVA requires that States maintain the level of election administration funding used in November 2000. Section 254(a)(7) of HAVA makes it clear that the requirements payments are not intended to supplant current State funding of election administration activities. By the same token, the Commonwealth does not intend to use HAVA funding to supplant county funding of election administration.

COUNTY AGREEMENTS

Prior to any disbursement of funds, the Commonwealth plans to require the counties requesting funding to enter into an agreement with the Department of State, establishing a contractual relationship. The county agreement would set forth:

- The amount of funding the Commonwealth is providing from the requirements payment.
- The project for which that funding is provided.
- The amount of the county match for the project.
- The project schedule and timeline.
- The schedule of disbursement for the funding.
- County reporting requirements regarding the expenditure of the funds;
- An audit provision to ensure that the Commonwealth is able to completely account for all funding provided to the county.
- The penalties incurred by the county for non-compliance with the agreement.

Through the county agreements with the Department, the Commonwealth would require counties to procure services, supplies, or technology in accordance with laws and policies governing county procurement, including competitive bidding requirements. It is the goal of the Commonwealth that any procurement contracts that expend Federal money be awarded through a



process that is fair and open to all qualified vendors. The Commonwealth anticipates that a County Plan would be a part of a County Agreement.

By requiring county agreements, the Commonwealth hopes to minimize miscommunication with the counties as to what will be required of both parties in utilizing the Federal funding. Understanding the basic nature of this type of initiative, the Commonwealth expects that the county agreements would contain a mechanism to modify the agreement to address various issues that may arise. Additionally, the Commonwealth wishes to ensure that the counties are working toward full compliance with the mandates of HAVA. Through the county agreements, the Commonwealth intends to set forth the consequences to the counties should they fail to use and account for the funds in accordance with HAVA and the County Agreement.

The Commonwealth plans to use the county plans as a means to determine a county's compliance with HAVA. The Commonwealth anticipates that the Department would prescribe the format of the county's report detailing the specific items for which funding might be available and the potential actions a county might take to qualify for funding, as well as required HAVA and Act 150 mandates. In addition, the Department plans to provide training to counties to assist them in completion of the county plan.

OTHER PLANS RELATING TO DISTRIBUTION AND MONITORING OF FUNDING

Should Federal funds be available, the Commonwealth also intends to consider funding to other entities (e.g., "Kid Vote," mock elections, League of Women Voters, etc.) that request funding. These entities would be required to enter into an agreement with the Department of State similar to those with the counties. The Secretary of the Commonwealth would determine the amount available to such entities.

All funding to be distributed to counties and other entities would be deposited in accounts and maintained by the Treasury Department and distributed to the recipient consistent with the policies and procedures established by the Commonwealth's Office of the Budget and Treasury Department.



STATE PLAN ELEMENT 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 of HAVA.

HAVA Section 254(a)(3) (42 U.S.C. §15404(a)(3)).

Section 254(a)(3) of HAVA requires the Commonwealth to describe in its State Plan how it will provide for voter education, election official education and training, and poll worker training that will assist the Commonwealth in meeting the requirements of Title III.

Because many counties will be purchasing new voting systems over the next several years, the Commonwealth and its county boards of elections must ensure that voters fully understand how to vote on these new systems well in advance of Election Day. In fact, the General Assembly explicitly recognized the need for well-trained and educated county election officials when it passed Act 150 of 2002 in December. Act 150 gives the Secretary of the Commonwealth the authority to develop a voluntary professional certification and poll worker-training program for county election officials.⁹³

VOTER EDUCATION

The Commonwealth believes that voter education is the solution to eliminating much of the confusion that led to the debacle in Florida during the November 2000 election. Therefore, Pennsylvania, through the Department of State, plans to embark on an extensive education effort using all the tools at its disposal to educate its voters regarding their voting rights and the correct procedures to be used at their polling place.

Through the Department of State, the Commonwealth plans to do the following:

- Develop an extensive voter education and outreach program. The planned education program, to be developed in consultation with representatives of county governments and advocacy groups for alternative language minorities, individuals with disabilities and other advocacy groups, would be aimed at encouraging voter registration and participation and educating voters of the correct voting procedures (including what constitutes a vote) in all communities and encourage their participation in every election.
- Inform newly registered voters of identification requirements.
- Inform all potential voters of provisional ballot requirements.



- Distribute training materials to county elections offices to allow them to augment the Department of State's voter education program. This planned education effort would not supplant any county voter education programs required by section 301(a)(1)(B) of HAVA.⁹⁴ As part of its planned training of county election personnel, the Department of State would conduct or facilitate training seminars on the uniform definition of what constitutes a vote.
- Produce additional HAVA compliant voter registration applications and distribute them to all registration agencies, the 67 county registration offices and civic organizations that are interested in voter registration.
- Provide voter education materials in alternative languages in those jurisdictions falling under section 203 of the Voting Rights Act, as well as those jurisdictions with responsibilities to adhere to the requirements of other provisions of the Act, including sections 2, 4(e) and 208; to offer to act as a resource to assist counties requesting alternative language interpreters at polling places; and to make available alternative language voter education materials to all other jurisdictions irrespective of their coverage under section 203 and groups who request them. The Department of State plans to work closely with the county boards of elections, academic institutions, community organizations, and other partners to meet the alternative language requirements of HAVA and the Voting Rights Act.
- Produce public service announcements to educate voters and encourage voter participation. PSAs would be produced in alternative languages to further encourage voter participation by citizens whose primary language is not English.
- Work with various agencies of the Commonwealth government, colleges, high schools and community groups to publish and distribute information to client groups. The Department plans to schedule public service announcement elements of a voter education program no later than six weeks before the first primary or election in which HAVA requirements are in effect.
- Continue the development of the partnership already established with the Pennsylvania Department of Education to conduct Mock Elections in all 501 of Pennsylvania's public school districts.
- Encourage all agency voter registration sites to take a more pro-active role in distributing voter education information and to ask that they include informational pamphlets in their agency mailings, including driver's licenses and public assistance checks. The Secretary of the Commonwealth plans to make various public appearances to encourage voter participation. In addition, the Department of State would work with the Pennsylvania Cable Network (PCN) and Pennsylvania institutions of higher learning to put voter education broadcasts on television throughout the Commonwealth and further to develop and market the website of the Department of State.



EDUCATION FOR STATE/COUNTY OFFICERS

The Department of State plans to develop and implement a comprehensive training course for county election officials. The program would be developed in consultation with a voluntary training workgroup that would consist of the members of the State Plan Advisory Board, members of the executive boards of the Eastern and Western County Election Personnel Associations, representative institutions of higher education, and representatives of alternative language and disability groups. The course would include training on the administration of elections; the specifics of Federal and State election laws; court decisions that affect Pennsylvania elections; Department of State directives; and programs, policies and methods designed to provide access to the election process.

The Department of State also plans to continue to offer seminars on election procedures to all county election personnel at the annual state election official's conference and to offer training through video conferencing.

POLL WORKER EDUCATION

The Commonwealth, through the Department of State, plans to develop, implement and conduct an extensive program to educate district election officials (*i.e.*, poll workers) regarding the current law and procedures relative to processing voters on election day, the operation of the voting systems, and the procedures to follow when canvassing votes and counting ballots (including absentee and provisional ballots) after the close of the polls. To do so, the Department would develop a video training session; hire staff to conduct the training to insure that counties are using consistent standardized procedures in every polling place on election day; further develop the Department's website; and work with colleges and universities in the production of the video and conducting training sessions through PCN. The Department plans to work with counties and key stakeholders in the community to develop the training program. In partnership with representatives from the disability community, alternative language minority and other minority communities, the Department intends to assist poll workers in whatever ways possible to understand the needs of individuals with disabilities and those who communicate using alternative languages.



STATE PLAN ELEMENT 4

How the State will adopt voting system guidelines and processes that are consistent with the requirements of section 301 of HAVA (relating to voting systems standards).

HAVA Section 254(a)(4) (42 U.S.C. § 15404(a)(4)).

Section 254(a)(4) of HAVA requires the Commonwealth to describe in its State Plan how it plans to adopt voting system guidelines and processes that are consistent with the requirements of section 301 of HAVA, including the requirement for a computerized statewide voter registration list and new federal requirements for voters who register by mail.

Among the changes made by the Pennsylvania Legislature in Act No. 2002-150 are provisions dealing with the approval of voting systems. All voting systems used in Pennsylvania must be examined and approved by the Secretary of the Commonwealth. However, until the passage of Act 150, there was no requirement that the Federal authority that administers the Voting System Performance and Test Standards also to have approved that electronic voting system.

Under Act 150, section 1105-A of the Election Code⁹⁵ requires all electronic voting system vendors to provide proof of Federal certification before presenting their electronic voting systems to the Secretary of the Commonwealth for approval. For now, this means that the voting systems must have been approved according to standards developed by the Federal Election Commission. After the establishment of the Election Assistance Commission, section 1105-A requires that electronic voting systems be approved according to the standards adopted by the Commission prior to approval in Pennsylvania. Consequently, no new electronic voting system may be approved in Pennsylvania without meeting the high standards of the Federal government, including "second chance voting," accessibility standards for individuals with disabilities, error rate, and audit capacity requirements. Electronic voting systems approved by the Secretary of the Commonwealth before the establishment of these standards will be reexamined to ensure compliance with HAVA.



STATE PLAN ELEMENT 5

How the State will establish the fund required by section 254(b) of HAVA (relating to requirements for election fund) for purposes of administering the State's activities under Part I of HAVA (relating to requirements payments) of Title II, Subtitle D (relating to election assistance), including information on fund management.

HAVA Section 254(a)(5) (42 U.S.C. §15404(a)(5)).

Section 254(a)(5) of HAVA requires the Commonwealth to describe in its State Plan how it plans to establish the election fund required by section 254(b) of HAVA, including information on fund management. The purpose of the required election fund is to administer the State's activities relating to its requirements payments. Section 254(b) requires an election fund to be "established in the treasury of the State government," "exclusively to carry out the activities for which the requirement payments" have been made to the State.⁹⁶ The election fund is to include:

- (A) Amounts appropriated or otherwise made available by the State for carrying out the activities for which the requirements payment [has been] made to the State....
- (B) The requirements payments made to the State under [HAVA Part II].
- (C) Such other amounts as may be appropriated under law.
- (D) Interest earned on deposits of the fund.⁹⁷

The Commonwealth recognizes the need to keep the funds from the requirements payment, together with State funds appropriated or designated by the State for carrying out the activities for which the requirements payment has been made, completely separate and independent from other funds to ensure that the requirements payments and earmarked State funds are used exclusively for activities mandated by HAVA. The Commonwealth has established a fund and a separate appropriation for funding for the requirements payments in accordance with Commonwealth procedures. The Commonwealth plans to manage the election fund as a restricted account in accordance with Federal and Commonwealth standards and policies. The Department of State's HAVA Administrator, the Department's Budget Director, and the Secretary of the Commonwealth, each by personal signature, must approve all expenditures out of this account – and only if accompanied by documentation describing the expenditure, such as an approved county agreement or an invoice under such an agreement.



STATE PLAN ELEMENT 6

The State's proposed budget for activities under Part II of HAVA, 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 Section 254(a)(6) (42 U.S.C. § 15404(a)(6))

Section 254(a)(6) of HAVA requires the Commonwealth to describe in its State Plan a budget for its proposed activities and anticipated expenditures for those activities.

The reform effort that HAVA represents is extensive and far-reaching. But its success is dependent on Federal funding. Pennsylvania's plan presumes full funding according to the timetable contained in HAVA. It is essential that Congress and the President adhere to the funding timetable and the funding amounts authorized by HAVA. If full funding is not forthcoming on the schedule established by HAVA, the success of this plan will be jeopardized.

The General Services Administration has released funds authorized by Title I of HAVA that, combined under sections 101 and 102, amount to \$34,240,120. Unfortunately, since the Election Administration Commission has not yet been formed to develop and announce specifics relating to Title II, the responsible Federal agency has been unable to announce any specific funding estimates. Dollar amounts are, therefore, difficult to predict. However, the Congressional Research Service (CRS) estimates that full funding for Pennsylvania under HAVA for both Title I and Title II receipts will total \$162,671,095. This estimate was based on Title I receipts of \$33,951,606. CRS estimates that \$128,719,489 of that amount represents Title II funding. Based on the actual Title I funding and the CRS estimate for Title II, Pennsylvania's allocation under HAVA is expected to total \$162,959,000.

Consistent with section 253(b)(5) of HAVA, the funds appropriated by the General Assembly and expended by the Commonwealth for the SURE system enacted in January 2002 satisfy the 5% State match required by HAVA. The 5% match requirement is calculated as 5% of the combined State and Federal expenditure for HAVA activities. This calculation requires a multiplier of 0.0526 of the Federal funds and is estimated to be \$8,571,000, well under the amount already appropriated by the Commonwealth.



Distribution of Federal Funds

The Commonwealth plans to distribute Federal dollars using a 72/28 split of Federal monies. Counties would receive 72% of the funding; the Commonwealth government would receive 28%. The Funds would be distributed in four ways, as follows:

Section 101 Funds: Section 101 funds would be split between the counties and the Commonwealth. Twenty-six percent (26%) would be distributed to the counties for the following:

PURPOSE	AMOUNT
Polling Place Accessibility	\$1,000,000
County Grants (<i>See below</i>):	\$2,000,000
TOTAL	\$3,000,000

The State government would receive seventy-four percent (74%) of the section 101 funds, as follows:

PURPOSE	AMOUNT
Statewide Voter Registration Database	\$3,500,000
Voter Education/Voter Outreach	\$ 2,000,000
Poll-worker Training	\$ 750,000
County Election Official Training	\$ 100,000
Alternative Language Assistance	\$ 500,000
Provisional Ballot Hotline/Website	\$ 400,000
Administrative Expenses/Complaint Procedures	\$ 823,168
Miscellaneous/State Plan Expenses	\$ 250,000
TOTAL	\$8,323,168.00

Section 102 Funds: Qualifying counties would receive 100% of the Federal funds provided under section 102 of HAVA. These funds would be distributed to the 26 counties using lever voting machines in 6,143 precincts at the November 2000 election and to the 11 counties using punch card systems (1,030 precincts) to purchase HAVA compliant DREs or other HAVA compliant systems. Funds received: \$22,916,952.

Title II Funds: Of the Federal funds received under Title II, 70.8% would be set aside for the counties; and 29.2% would be reserved for the Commonwealth government.

County Grant Funds: A portion of Title II monies would be set aside for polling place accessibility. The remaining portion of the county Title II monies and a portion of the section 101 monies as described above would be placed in a County Grant Fund and distributed to the counties based on their County Plan. In distributing these funds, priority would be given to modernizing voting systems. The Department will distribute the funds on an equitable basis to all counties. To receive the funding from the County Grant Fund, a county would have to file a county plan for the use of Federal funds and sign a county agreement. The County Grant funds



could be used for the purchase of voting equipment, the purchase of accessible voting machines, voter education, poll-worker training, and other HAVA requirements.

Funds to be Used by the Commonwealth Government: The Commonwealth would receive 29.2% of the Title II monies (requirements payments). These monies would be put into a separate account and used to implement HAVA requirements, including the statewide vote registration database, voter education programs, poll-worker training and administrative expenses.

The chart below lists activities and costs of HAVA to be implemented in Pennsylvania. Column B represents the portion of the total Federal fund expenditure appropriated under section 101 and Title II monies (unless otherwise noted) for each activity outlined in this plan. The data provided in the chart assumes full funding, including the approximate \$25 million shortfall Pennsylvania experienced in the 2003 appropriation. Should the Congress fail to provide the amounts authorized by HAVA, funding amounts for each activity would be reduced proportionately, based on the percentage of the total funding the activity represents.

A. ACTIVITY	B. PERCENTAGE OF TOTAL AUTHORIZED BY SECTION 101 AND TITLE II	C. JURISDICTION	D. PURPOSE
Voting Systems	100% of § 102 Monies	County	For the purchase of new voting equipment pursuant to § 102 of HAVA
Voter Registration Database	14.5%	State	Development of statewide voter registration list
Voter Education/Voter Outreach	6.3%	State/County	To educate voters re: election procedure, increase voter participation, and make available additional voter registration applications
Poll Worker Training	2.3%	State/County	To train all poll workers in the uniform procedures to be used at the polling places on Election Day.
Election Officer Training	0.4%	State	Train State and county officials in all Federal and State procedures related to elections
Polling Place Accessibility	2.9%	County	To bring polling places standards up to meet the Federal law.
Alternative Language	2.9%	State/County	To make election materials



Accessibility			and information available to jurisdictions having alternative language minorities
Administrative Expenses/Implementation Costs	3.4%	State	For Commonwealth personnel to administer HAVA and other costs for implementation
Provisional Voter Hotline/Website	0.5%	State/County	To establish the HAVA required Website and toll free line
Miscellaneous/State Plan Expenses	2.5%	State	For grants to independent groups; unforeseen costs in implementing HAVA; and development of the State Plan
County Grants to Implement the Provisions of HAVA	64.4%	County	Includes activities outlined in the County's Plan, including the purchase of HAVA compliant voting systems and other requirements of HAVA.

The efficient allocation and expenditure of Title I and Title II funds is vitally important to the overall success of providing both the counties and the Commonwealth with the maximum resources available both to implement the requirements of HAVA and to continue to improve the administration of elections for Commonwealth voters.



STATE PLAN ELEMENT 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.

HAVA Section 254(a)(7) (42 U.S.C. § 15404(a)(7)).

Section 254(a)(7) of HAVA requires the Commonwealth to describe in its State Plan how it will use the requirements payment consistent with the Commonwealth's obligation under HAVA to maintain its pre-November 2000 expenditure effort for the activities that it will use the requirements payments to support.

Though the Commonwealth appreciates the commitment that the Federal government has made to election assistance both by enacting HAVA and providing funding to the States to allow them to fully realize the ultimate goals of HAVA – a free and open election process for all citizens – the Commonwealth realizes that it still has the primary responsibility to maintain the programs that it was funding prior to November 2000 and to develop new and innovative programs to make the Commonwealth a leader in election administration.

To this end, in using its requirements payment, the Commonwealth plans to maintain expenditures of the State for activities funded by the payment at a level no less than the level of such expenditures in FY 1999-2000. In addition, the Commonwealth plans to ask each county to file an annual report to assure the Commonwealth that each county has complied with the requirement of HAVA that the State maintain its pre-November 2000 effort as a condition of receiving funds under Title II of HAVA.



STATE PLAN ELEMENT 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.

HAVA Section 254(a)(8) (42 U.S.C. § 15404(a)(8)).

Section 254(a)(8) of HAVA requires the Commonwealth to state in its State Plan how it plans to adopt performance goals and measures to be used by the Commonwealth to determine Pennsylvania's success in carrying out the Commonwealth's State Plan.

One of the biggest threats to the success of an initiative is the failure to follow through on progress and to be able to adjust plans as projects move forward and challenges are faced. The Commonwealth has taken a two-pronged approach to ensure that all involved are committed to improving the administration of elections for Pennsylvania citizens. The first prong involves monitoring the county agreements, and the second prong focuses upon the Commonwealth's continued self-assessment of its progress at the State level.

THE HAVA ADMINISTRATOR

The Commonwealth intends to assign at least one employee of the Department of State the responsibility to oversee the HAVA project. This employee, the HAVA Administrator, would be responsible for monitoring the progress of the counties, overseeing the county agreements, and keeping account of the status of the requirements payment fund. The HAVA Administrator would provide reports to the Secretary of the Commonwealth on a quarterly basis as to the status of the Commonwealth's compliance with HAVA and the various projects established by the counties.

MONITORING THE COUNTY AGREEMENTS

Through the reporting requirements included in the proposed county agreements, the Department of State should be able to monitor the progress of the county projects and the usage of the funding. The Commonwealth plans to hold the counties responsible for their expenditures of the funding. The Department of State would assist the counties to the extent possible to ensure project success.



MONITORING OF DEPARTMENT ACTIVITIES

While monitoring the county use of the funds is important, the Department of State also plans constantly to review its progress from two perspectives: the disbursement of funding and its own efforts in meeting the requirements of HAVA.

Through its annual report, the Department of State would inform all interested parties as to the Commonwealth's progress and address any concerns that might require action by the Governor or the General Assembly. Through this report, the Secretary of the Commonwealth would be able to detail potential changes to the Commonwealth's State Plan in advance of beginning the formal process for modifying the State plan under HAVA.

PERFORMANCE GOALS AND MEASURES

The Department of State plans to establish performance goals and measurement processes to monitor the progress under the State Plan. This would better enable the HAVA Administrator to measure progress in achieving the goals. The Department of State would continuously monitor and review the performance of each initiative that is funded by requirements payment to determine progress.

The planned performance goals listed below are intended to apply to elections that occur during the year identified. The planned performance goals include:

a. Elimination of lever voting machines and punch card electronic voting systems

Timetable: January 1, 2006

Criteria: Replacement of lever voting machines and punch card electronic voting equipment in compliance with Title III requirements for the 24 counties that utilized lever voting machines in the November 2000 Election that still use them and the 11 counties that used punch card electronic systems in the 2002 election.

Responsible Official: The county boards of elections, with the cooperation and assistance of the Secretary of the Commonwealth.

b. Implementation of the Statewide Uniform Registry of Electors

Timetable: January 1, 2006

Criteria: Implementation of a single, uniform, official, centralized, interactive, computerized statewide voter registration list and database.

Responsible Official: The Secretary of Commonwealth, with the cooperation of each county voter registration office.



c. Polling place accessibility

Timetable: January 1, 2004

Criteria: Survey all polling places in the Commonwealth to determine accessibility under the Federal Voting Accessibility for the Elderly and Handicapped Act (42 U.S. C. 1973gg *et seq.*) and work to increase the number of accessible polling places in Pennsylvania.

Responsible Official: The county boards of elections, with the cooperation and assistance of the Secretary of the Commonwealth.

d. Voter education program

Timetable: January 1, 2004

Criteria: Establishment and implementation of a voter education program providing voters with information relative to voting procedures, voting identification, complaint procedures, provisional ballots and voting information specific to each type of voting system that clearly explains to the voter how to correctly cast a ballot; how to correct an error; how to obtain a replacement ballot; and the effect of casting multiple votes for an office.

Responsible Official: The Secretary of Commonwealth, with the cooperation of each county board of elections.

e. Poll Worker/Election Officer Training

Timetable: January 1, 2006

Criteria: Establishment and implementation of a training program for district election and county election officials to insure that procedures used in polling places are standardized across the Commonwealth to the greatest extent possible.

Responsible Official: The Secretary of Commonwealth, with the cooperation of each county board of elections.

f. Accessibility for individuals with disabilities

Timetable: January 1, 2006

Criteria: Purchase of at least one DRE that is usable by individuals with a disability in each polling place in the State and adequate placement of this equipment throughout counties that have adopted vote-by-mail and increasing the number of accessible polling places in the Commonwealth.

Responsible Official: The Secretary of Commonwealth, with the cooperation of each county board of elections.



g. Alternate Language Accessibility

Timetable: January 1, 2004

Criteria: Initiate an outreach program to alternate language communities to apprise them of their voting rights and the correct voting procedures and offer alternative language services to the counties requesting them.

Responsible Official: The Secretary of the Commonwealth, with the cooperation of each county board of elections.

h. Provisional Voting

Timetable: January 1, 2004

Criteria: Implementation of a free access system in the Department so that the voters can determine if their provisional ballot was counted.

Responsible Official: Secretary of the Commonwealth, with the cooperation of each county board of elections.

The Department plans to issue periodic progress reports on the status of implementing the performance goal. After January 1, 2006, when all of the deadlines have passed, the Department plans to produce a report on how the performance goals have been met.



STATE PLAN ELEMENT 9

A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402 of HAVA (42 U.S.C. § 15512).

HAVA Section 254(a)(9) (42 U.S.C. § 15404(a)(9)).

Section 254(a)(9) of HAVA requires the Commonwealth to describe in its State Plan the administrative complaint procedures that it has established as required by section 402 of HAVA.

SUMMARY OF REQUIREMENTS UNDER STATE PLAN ELEMENT 9

As a condition of receiving any Federal funds, section 402(a)(1) of HAVA⁹⁸ requires the Commonwealth to establish and maintain State-based administrative complaint procedures that meet requirements prescribed by section 402(a)(2). Section 402(a)(2)⁹⁹ mandates the following requirements:

- (A) The procedures shall be uniform and nondiscriminatory.
- (B) Under the procedures, any person who believes that there is a violation of any provision of Title III (including a violation that has occurred, is occurring, or is about to occur) may file a complaint.
- (C) Any complaint filed under the procedures shall be in writing and notarized, and signed and sworn by the person filing the complaint.
- (D) The State may consolidate complaints filed under subparagraph (B).
- (E) At the request of the complainant, there shall be a hearing on the record.
- (F) If, under the procedures, the State determines that there is a violation of any provision of Title III, the State shall provide the appropriate remedy.
- (G) If, under the procedures, the State determines that there is no violation, the State shall dismiss the complaint and publish the results of the procedures.
- (H) The State shall make a final determination with respect to a complaint prior to the expiration of the 90-day period that begins on the date the complaint is filed, unless the complainant consents to a longer period for making such a determination.
- (I) If the State fails to meet the deadline applicable under subparagraph (H), the complaint shall be resolved within 60 days under alternative dispute resolution procedures established for purposes of this section. The record and other materials from any proceedings conducted under the complaint procedures established under this section shall be made available for use under the alternative dispute resolution procedures.



PENNSYLVANIA LAW

Section 11 of Act 2002-150 establishes – effective December 9, 2003 – the uniform, nondiscriminatory State-based administrative complaint procedure required by section 402 of HAVA.¹⁰⁰ The Department of State plans to establish within its Bureau of Commissions, Elections and Legislation or successor bureau a procedure for the review of complaints regarding the administration of Title III of HAVA. The Department also plans to provide a complaint form that would require the signature of the complainant; an affidavit and notarization (as required by § 402(a)(2)(C) of HAVA¹⁰¹ and § 1206.2(a) of the Election Code¹⁰²); and the attachment of any supporting documentation (as required by section 1206.2(a)).

When a complaint pertains to the Department of State, the Department is required to forward it to the Pennsylvania Office of General Counsel within three business days of its receipt.¹⁰³ The Department would then have 20 days either to reach an agreement with the complainant or to file a written response to the complaint.¹⁰⁴ The Office of General Counsel must provide the complainant with a copy of the response and an opportunity for an informal hearing, as required by section 402(a)(2)(E) of HAVA.^{105, 106} If a hearing were requested, the Department would be given notice and the opportunity to participate.¹⁰⁷ The Office of General Counsel must issue a final determination and remedial plan, if necessary, no later than 90 days after the filing of the complaint.¹⁰⁸ If the Office of General Counsel should fail to issue its determination within 90 days, it must provide alternative dispute resolution for the disposition of the complaint.¹⁰⁹ The alternative process must be completed within 60 days, as HAVA requires.¹¹⁰

When a complaint pertains to a local or county employee or official, the Department is required by section 1206.2(b)(1)¹¹¹ to provide the county board of elections with a copy of the complaint within three days of receiving it. The county board of elections would have 20 days under section 1206.2(b)(2)¹¹² either to reach an agreement with the complainant or to file a written response. The Department would provide the complainant a copy of this response and an opportunity to request an informal hearing, as required by section 402(a)(2)(E) of HAVA and section 1206.2(b)(3) of the Election Code.¹¹³ If a hearing were requested, the county board of elections would be given notice and the opportunity to participate. As both HAVA and the Election Code require, the Department would issue a final determination and remedial plan, if necessary, no later than 90 days after the filing of the complaint. Should the Department fail to issue its determination within 90 days, it would be required to provide alternative dispute resolution for the disposition of the complaint. The law requires the alternative process to be completed within 60 days,¹¹⁴ as required by HAVA.

Proceedings before the Department and decisions made under section 1206.2 are not considered to be administrative adjudications under the Administrative Agency Law,¹¹⁵ and a determination made with regard to county complaints is not to be regarded as an agency determination subject to appellate review.¹¹⁶ Either party in this case may initiate a *de novo* appeal from the Department's final order in the court of common pleas of the county where the election board is located.¹¹⁷ Determinations made by the Office of General Counsel with regard to complaints made against the Department of State are agency determinations subject to appellate review.¹¹⁸



STATE PLAN ELEMENT 10 *If the State received any payment under title I of HAVA, 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.*

HAVA Section 254(a)(10) (42 U.S.C. § 15404(a)(10)).

Section 254(a)(10) of HAVA requires the Commonwealth to describe in its State Plan how funds that it has received under sections 101 or 102 of HAVA (relating to payments to States for activities to improve administration of elections and replacement of punch card and lever voting machines) will affect the activities that the Commonwealth plans to carry out under the State Plan. Section 254(a)(10) also requires the Commonwealth to state in its State Plan the amount of funds available for its proposed activities.

The Commonwealth plans to use the funding it received under Title I of HAVA to assist the Commonwealth and its counties to accomplish the requirements of HAVA. The Commonwealth intends to use the Title I funding in the following manner

Section 101 Funding	
Polling Place Accessibility	\$1,000,000
County Grant Fund	\$3,500,000
Statewide Voter Registration Database	\$3,000,000
Voter Education	\$1,000,000
Poll worker Training	\$ 750,000
County Election Official Training	\$ 100,000
Alternative Language Assistance	\$ 500,000
Provisional Voter Hotline/Website	\$ 400,000
Administrative Expenses/Complaint Line	\$ 823,168
Miscellaneous/State Plan Expenses	\$ 250,000
Total	\$11,323,168.00

Section 102 Funding	
Replacement of Lever Voting Machines (6,143 qualifying precincts) and Punch Card Electronic Voting Systems (1,030 qualifying precincts)	\$ 22,916,952



STATE PLAN ELEMENT 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—*

- (A) *is developed and published in the Federal Register in accordance with section 255 as required in the same manner as the State plan;*
- (B) *is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and*
- (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 section 255 of HAVA.*

HAVA Section 254(a)(11) (42 U.S.C. § 15404(a)(11))

Section 254(a)(11) of HAVA requires the Commonwealth to describe in its State Plan how it will manage the State Plan on an ongoing basis.

Pennsylvania plans to use its State Plan as the basis for managing the activities necessary for the implementation of the requirements of HAVA. The HAVA Administrator, under the guidance of the Commissioner of the Bureau of Commissions, Elections, and Legislation (CEL) and the Secretary of the Commonwealth, would be responsible for the continuous management and implementation of the State Plan.

The HAVA Administrator would be responsible for implementation of that part of the State Plan that is to be carried out at the State level, with county involvement via the State Plan Advisory Board on various projects. The Commonwealth, through the CEL, would be responsible for tracking resource requirements; approving and tracking expenditures of HAVA funds; coordinating decision-making; and ensuring that implementation activities are on track. Additional staff would be hired to administer the various program requirements. The CEL staff would manage the day-to-day coordination and implementation of projects within the State Plan. Responsibilities would include reporting project activities, progress, and resource needs/expenditures, as well as conducting the voter education and poll worker training efforts.

The Commonwealth understands and agrees to comply with HAVA requirements related to ongoing management of the State Plan. Material changes in the administration of the State Plan must be developed in consultation with the State Plan Advisory Board and cannot be made unless the change is published in the *Federal Register*, in accordance with section 255 of HAVA.¹¹⁹



The Commonwealth also acknowledges that any change in the State Plan is subject to public notice and comment under section 256 of HAVA¹²⁰ and may take effect only after the expiration of the 30-day period beginning on the date the change is published in the *Federal Register*.



STATE PLAN ELEMENT 12

In the case of a State with a State plan in effect under Subtitle D (relating to election assistance) of Title II of HAVA 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 the previous fiscal year.

HAVA Section 254(a)(12) (42 U.S.C. § 15404(a)(12)).

Pennsylvania had no State Plan in effect for the previous fiscal year. However, the Commonwealth embarked on a number of initiatives in election administration over the past few years. The initiatives included the formation of two task forces in 2001 to study voting systems and voting standards; and, in accordance with Act 2002-3, Pennsylvania in 2002 began implementation of a statewide voter registration system. These initiatives should provide a starting point for moving forward with implementation of HAVA in the Commonwealth of Pennsylvania.

In addition, the Pennsylvania General Assembly in December 2002 enacted Act 2002-150, which prescribes procedures for implementing the requirements of HAVA relative to voter identification, provisional ballots, and complaint procedures. Act 150 also establishes an advisory board to develop mandatory standards for what constitutes a vote and a separate advisory board to develop recommendations to develop a State Plan to implement HAVA.



STATE PLAN ELEMENT 13

A description of the committee which participated in the development of the State plan in accordance with section 255 of HAVA and the procedures followed by the committee under sections 255 and 256.

HAVA Section 254(a)(13) (42 U.S.C. § 15404(a)(13)).

Section 254(a)(13) of HAVA requires the Commonwealth to describe the committee that participated in the development of the State Plan as required by section 255 of HAVA and the procedures followed by the committee under sections 255 and 256 of HAVA.¹²¹ Section 255(a) requires the chief State election official to "develop the State plan ... through a committee of appropriate individuals, including the chief election officials of the two most populous jurisdictions within the State, other local election officials, stake holders (including representatives of groups of individuals with disabilities), and other citizens, appointed for such purpose by the chief State election official."¹²² Section 256 of HAVA requires the Commonwealth to satisfy certain "public notice and comment requirements."¹²³

To facilitate the Secretary of the Commonwealth's compliance with section 255(a) of HAVA, the General Assembly established within the Department of State the State Plan Advisory Board.¹²⁴ Intended by the Legislature to be the committee required by section 255 of HAVA, the Board was charged with the responsibility to advise the Secretary of the Commonwealth on development of the State Plan.¹²⁵ The Board was required to make recommendations on all aspects of the State Plan.¹²⁶

The Board is comprised of the following members:

- (1) One director of elections from a county of the first class [Philadelphia County].
- (2) One director of elections from a county of the second class [Allegheny County].
- (3) The chairperson of the political party with the highest number of registered voters in the Commonwealth [the Democratic Party].
- (4) The chairperson of the political party with the second highest number of registered voters in the Commonwealth [the Republican Party].
- (5) Eleven members appointed by the Secretary of the Commonwealth as follows:
 - (i) Seven directors of elections, one from a county of the second class A and one each from a county of the third, fourth, fifth, sixth, seventh and eighth class.
 - (ii) One representative of an organization of disabled Pennsylvania veterans.
 - (iii) One representative of an organization of blind and visually impaired Pennsylvanians.
 - (iv) Two representatives of the public at large, who shall be registered electors of the Commonwealth.



Election Code § 205(b).¹²⁷ The members serve for terms of five years and must meet as needed to fulfill the requirements of the law.¹²⁸ Section 205 also imposes several requirements upon the Advisory Board regarding voting, rules and compensation.¹²⁹

Following is a list of the current members of the Board:

- Chair V. Kurt Bellman, Director of Elections, Berks County (county of the third class)
- Gladys M. Brown, Public At Large Member
- V. Rev. Neal Carrigan, Blind & Visually Impaired Pennsylvanians
- Vice-Chair Deena K. Dean, Director of Elections, Bucks County (county of the second class A)
- Nancy T. James, Administrator, Potter County (county of the eighth class)
- Denise W. Jones, Chief Clerk/Director of Elections, Venango County (county of the sixth class)
- Lee E. Knepp, Chief Clerk, Snyder County (county of the seventh class)
- Robert Lee, Jr., Voter Registration Administrator, Philadelphia County (county of the first class)
- Tom McDole, Legislative Committee Chairman, Disabled Veterans of PA
- Alan Novak, Chairman, Republican State Committee of PA
- Fred G. Pfeiffer, Director of Elections, Lycoming County (county of the fifth class)
- Representative T.J. Rooney, Chair, Democratic State Committee of PA
- Larry Spahr, Director of Elections, Washington County (county of the fourth class)
- Josh Wilson, Public At Large Member
- Mark Wolosik, Division Manager for Elections, Allegheny County (county of the second class)

The Board encouraged input from the citizens of the Commonwealth and representatives of interested parties. In an effort to obtain input from a broad range of individuals and organizations, the Board held a public hearing on March 26, 2003, before developing its recommendations. Notice of the hearing was placed in advance on the Department of State's website and published in the *Pennsylvania Bulletin*¹³⁰, *The Patriot-News* of Harrisburg; the *Philadelphia Inquirer*; the *Pittsburgh Post-Gazette*; and the Spanish-language *El Hispano*. At the public hearing, the Board heard testimony from representatives of the American Civil Liberties Union of Pennsylvania, the Pennsylvania Council of the Blind, and Common Cause/PA.

All meetings of the Board were open to public attendees, who were afforded the opportunity to comment during the Board's meetings. The Board was fortunate to receive input from various advocacy groups, including Common Cause/PA; the Pennsylvania League of Women Voters; the Pennsylvania Council of the Blind; the United States Postal Service; and Carlos A. Zayas, a voting rights advocate for the Hispanic community in Pennsylvania. The Board provided public attendees with copies of documents relating to development of the State Plan. In addition, the Department of State advertised in advance the meetings of the Board in the *Pennsylvania Bulletin*,¹³¹ *The Patriot-News* and on the Department of State website.



Meetings of the Board were held on a regular basis, beginning on February 27, 2003. The Board held further meetings on March 26 (public hearing); April 3; April 11; April 17; April 23; May 1; and May 12. On May 12, 2003, the Board presented its recommendations to the Secretary of the Commonwealth.



APPENDIX A

TESTIMONY AT PUBLIC HEARINGS ON THE
PENNSYLVANIA PRELIMINARY STATE PLAN TO IMPLEMENT HAVA

Reading, July 7, 2003

Mr. Kurt Bellman, Director of Elections, Berks County
Mr. Bill Chico Ross, Civil Rights Advocate, Abilities in Motion
Mr. Ralph Trainor, Executive Director, Abilities in Motion
Ms. Jo-Ann Zaklielarz, Vice President, Government Relations, AccuPoll, Inc
Mr. Carlos Zayas, Voting Rights Advocate

Pittsburgh, July 9, 2003

Mr. Paul O'Hanlon, Pa. Protection & Advocacy, Disabilities Law Project, United Cerebral Palsy
Association of Pittsburgh District
Mr. Jonathan B. Robinson, Attorney
Mr. Vince Shulte, Unisys
Mr. Fred Smith, Director of Elections, Cambria County
Mr. Regis Young, Director of Elections, Butler County

Philadelphia, July 14, 2003

Mr. Barry Kauffman, Common Cause
Ms. Elizabeth Milner, Pa. League of Voters
Ms. Marlene Perkins, Easter Paralyzed Veterans Association
Mr. Wilfredo Rojas, President Delaware Valley Voter Registration Education Project

Harrisburg SPAB Meeting, July 15, 2003

William A. Gannon, Pa. Developmental Disability Council
John Kesich, Citizen

Other Filings

Brenda Dare, Disability Advocate
Mr. Larry Frankel, Legislative Director, ACLU
Mr. Daryl Wold, Attorney, Orange County, California



APPENDIX B

Voting Systems Used in the November 7, 2000 Election in Pennsylvania

	Electronic Voting Systems					Affected	Total
	Paper	Lever Machine	D.R.E.	Optical Scan	Punch Card	# of Precincts	# of Precincts
Adams				51			51
Allegheny		1309				1,309	1,309
Armstrong					74	74	74
Beaver			129				129
Bedford				42			42
Berks			180				180
Blair					97	97	97
Bradford				61			61
Bucks		298				298	298
Butler					82	82	82
Cambria					165	165	165
Cameron				10			10
Carbon		47				47	47
Centre					85	85	85
Chester					220	220	220
Clarion				43			43
Clearfield				71			71
Clinton	16	21				21	37
Columbia				57			57
Crawford	2	65				65	67
Cumberland				96			96
Dauphin			159				159
Delaware		406				406	406
Elk				33			33
Erie		153				153	153
Fayette		105				105	105
Forest				9			9
Franklin				75			75
Fulton				13			13
Greene			44				44
Huntingdon				58			58
Indiana				68			68
Jefferson				52			52
Juniata				20			20



APPENDIX B (continued)

	Electronic Voting Systems					Affected	Total
	Paper	Lever Machine	D.R.E.	Optical Scan	Punch Card	# of Precincts	# of Precincts
Lackawanna		239				239	239
Lancaster		225				225	225
Lawrence				106			106
Lebanon		55				55	55
Lehigh		145				145	145
Luzerne		316				316	316
Lycoming	12	74				74	86
McKean	2	40				40	42
Mercer		100				100	100
Mifflin	1	29				29	30
Monroe		54				54	54
Montgomery			406				406
Montour					15	15	15
Northampton		139				139	139
Northumberland		94				94	94
Perry					33	33	33
Philadelphia		1681				1,681	1,681
Pike		16				16	16
Potter	30		4				34
Schuylkill				167			167
Snyder				25			25
Somerset				68			68
Sullivan				15			15
Susquehanna				43			43
Tioga				44			44
Union					26	26	26
Venango					49	49	49
Warren	3	30				30	33
Washington					184	184	184
Wayne		37				37	37
Westmoreland		306				306	306
Wyoming				30			30
York		159				159	159
Totals:	66	6,143	922	1,257	1,030	7,173	9,418
% of Total:	0.7%	65.2%	9.8%	13.3%	10.9%	76.2%	



APPENDIX C

Computerized Statewide Voter Registration List Requirements

	HAVA Requirements (Section 303(a))	SURE Compliance (25 Pa. C.S. § 1222)	Notes
1	Single (§ 303(a)(1)(A))	Yes	Section 1222(c) establishes SURE as a "single, uniform integrated computer system."
2	Uniform (§ 303(a)(1)(A))	Yes	Section 1222(c) establishes SURE as a "single, uniform integrated computer system."
3	Official (§ 303(a)(1)(A))	Yes	Section 1222(c)(6) provides that SURE shall "be the general register for a commission once the commission is connect to the SURE system." Further, 25 Pa. C.S. § 1401(c) specifies that "[a]fter a commission is connected to the SURE system, the general register of the commission shall consist of the registration information contained on the SURE system as maintained by the commission."
4	Centralized (§ 303(a)(1)(A))	Yes	Under section 1222, SURE must be maintained and administered by the Department of State. "Upon being connected, each commission shall be required to use the SURE system as its general register." 25 Pa. C.S. § 1222(e). Consequently, after connection, no county registration commission will be permitted to use any other system as its official registration record. The centralized SURE system will be the official registration record of all counties in Pennsylvania. 25 Pa. C.S. § 1222(c)(6).
5	Interactive (§ 303(a)(1)(A))	Yes	Section 1222(c) specifies that the SURE system must do all of the following: <ul style="list-style-type: none"> • Permit the commissions to add, modify and delete information in the system as necessary and appropriate. § 1222(c)(4). • Permit each commission and the department to have instant access to a commission's registration records maintained on the system. § 1222(c)(5). • Provide for the electronic transfer of completed voter registration applications and changes of address. § 1222(c)(8). • Permit auditing of each registered elector's registration record from the day of its creation until the day it is canceled. § 1222(c)(11).



6	Computerized (§ 303(a)(1)(A))	Yes	Section 1222(c) establishes SURE as a "single, uniform integrated computer system."
7	Statewide (§303 (a)(1)(A))	Yes	Section 1222(c) provides that "[a]ll [county] commissions shall be connected electronically to the SURE system and maintain their registration records in the system."
8	Defined at the state level (§ 303(a)(1)(A))	Yes	Section 1222(a) requires the "[D]epartment [of State] to develop and establish a Statewide Uniform Registry of Electors to be known as the SURE system."
9	Maintained at the state level (§ 303(a)(1)(A))	Yes	Section 1223 provides that "[t]he cost of establishment, implementation and maintenance of the SURE system technology and its emergency recovery system shall be borne by the Commonwealth."
10	Administered at the state level (§ 303(a)(1)(A))	Yes	In addition to the above, section 1222(f) establishes that "[t]he [S]ecretary [of the Commonwealth] shall promulgate regulations necessary to establish, implement, and administer the SURE system."
11	Contains the name and registration information of every legally registered voter in the State (§ 303(a)(1)(A))	Yes	Section 1222(c)(1) specifies that the SURE system must "contain a database of all registered electors in this Commonwealth."
12	A unique identifier is assigned to each legally registered voter in the State (§303 (a)(1)(A))	Yes	According to section 1222(c)(3), SURE must "assign a unique SURE registration number to each individual currently registered in this Commonwealth." Additionally, paragraph (10) provides that the system must "assign a unique registration number to each qualified elector who becomes registered and record the registered elector in the general register of the appropriate commission." Also, 25 Pa. C.S. § 1328.1 states that: "Each registered elector shall be assigned a single and unique SURE registration number....Once assigned, a SURE registration number shall not be changed, modified or altered."
13	Coordinated with other agency databases in the State (§ 303(a)(1)(A)(iv))	Yes	Section 1222 specifies that SURE must interact with other state agency databases. Specifically, section 1222(c)(7) mandates that SURE must "permit the sending of notices [from the Department of Health] to the appropriate officials regarding death, change of address or other information that could affect the qualifications of an applicant or registration of a registered elector." Further, SURE is required to "provide for the electronic transfer of completed voter registration applications and changes of address." § 1222(c)(8). The sending of notices and other information specified above mandate that SURE



			must interface with the Pennsylvania Departments of Transportation and Health. Section 1323(c)(3.1) of Title states that, after the Department of Transportation is connected to the SURE system, it "shall transmit electronically [to the county voter registration commissions] the contents of a completed voter registration application within five days of receipt of the application." With regard to changes of address between counties, 25 Pa. C.S. § 1323(c)(4) requires that the Department of Transportation "notify the commission of the county of the registrant's former residence."
14	Any election official, including any local election official, may obtain immediate electronic access to the information contained in the computerized list (§ 303(a)(1)(A)(v))	Yes	The SURE system assures that election officials have instant access to the SURE database. Section 1222(c)(5) specifically provides that SURE must "permit each commission and the department to have instant access to a commission's registration records maintained on the system." Under paragraph (7), each commission and the Department must have the ability to "review and search the system."
15	All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official (§ 303(a)(1)(A)(vi))	Yes	Section 1222(c)(4) provides that SURE must "permit the commissions to add, modify and delete information in the system as is necessary and appropriate." Section §1203(l) of Title 25 requires that a commission "promptly update information contained in its registration records." The same requirement for prompt updates of information in the SURE system by county commissions is contained in the other sections of Title: See 25 Pa. C.S. §§ 1323(c)(4)(i) & (5); 1328(d)(2); 1329(d); 1501(b)(2) & (3); 1502(a)(6); 1505(a) & (b); 1901(b)(4) & (c); 1903; 1904(a); and 1905(c)(2).
16	The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described (§ 303(a)(1)(A)(vii))	Yes	Section 1222(a) of Title 25 mandates that the Department of State "develop and establish" the SURE system. Additionally, "the cost of establishment, implementation and maintenance of the SURE system technology and its emergency recovery system shall be borne by the Commonwealth." 25 Pa. C.S. § 1223. Each commission must "have instant access to a commission's registration records maintained on the system." 25 Pa. C.S. § 1222(c)(5). Section 1222(c)(14) further establishes the Commonwealth's responsibility for the availability of the SURE system by specifying that SURE "be designed with an emergency recovery system to insure that registration records are not lost in the case of an emergency.



			natural disaster or other such event that could cause the system to malfunction."
17	The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State (§ 303(a)(1)(A)(viii))	Yes	Section 1222(c)(6) specifies that the SURE system must be "the general register for a commission once the commission is connected to the SURE system." As the general register, the SURE system's data will be used as the official data in the conduct of every election held in the county.



ENDNOTES

- ¹ HAVA §§ 255-56, 42 U.S.C. §§ 15405-06.
² See 33 Pa. Bull. 3573 (July 19, 2003).
³ 42 U.S.C. § 15406.
⁴ HAVA § 304, 42 U.S.C. § 15484.
⁵ *Id.*
⁶ *Id.* § 305, 42 U.S.C. § 15485.
⁷ *Id.* § 301(a)(6), 42 U.S.C. § 15481(a)(6).
⁸ 42 U.S.C. § 15481(a)(3)(B).
⁹ *Id.* § 15302(a)(3)(B).
¹⁰ See Pa. Const. Art. VII, § 6.
¹¹ 42 U.S.C. § 15481(a)(1)(B).
¹² *Id.* § 15481(a)(6).
¹³ Pennsylvania Election Code § 204(h), 25 P.S. § 2624(h).
¹⁴ 25 P.S. § 2624(d).
¹⁵ 42 U.S.C. § 15481(a)(3)(B).
¹⁶ 42 U.S.C. § 1973.
¹⁷ *Id.* § 1973b(e).
¹⁸ *Id.* § 1973aa-6.
¹⁹ HAVA § 302(a), 42 U.S.C. § 15482(a).
²⁰ *Id.* § 302(b)(2), 42 U.S.C. § 15482(b)(2).
²¹ 25 P.S. § 3050(a.4).
²² 25 P.S. §§ 3046 and 3050(a.2) & (a.4)(1).
²³ *Id.* § 3050(a.4)(2).
²⁴ *Id.*
²⁵ *Id.* § 3050(a.4)(3).
²⁶ *Id.*
²⁷ *Id.* § 3050(a.4)(4).
²⁸ *Id.*
²⁹ *Id.* § 3050(a.4)(5).
³⁰ *Id.* § 3050(a.4)(6).
³¹ *Id.* § 3050(a.4)(7).
³² 42 U.S.C. § 15482(a)(5)(B).
³³ 25 P.S. § 3050(a.4)(8).
³⁴ *Id.*
³⁵ *Id.*
³⁶ *Id.*
³⁷ *Id.* § 3050(a.4).
³⁸ 42 U.S.C. § 15482(b).
³⁹ *Id.* § 15483(b).
⁴⁰ 25 P.S. § 3042.
⁴¹ *Id.* § 3049(a).
⁴² *Id.*
⁴³ *Id.* § 3042.
⁴⁴ HAVA § 303(d)(1), 42 U.S.C. § 15483(d)(1).
⁴⁵ *Id.* § 303(d)(2), 42 U.S.C. § 15483(d)(2).
⁴⁶ *Id.* § 303(a)(1)(A), 42 U.S.C. § 15483(a)(1)(A).
⁴⁷ *Id.*
⁴⁸ *Id.* § 15483(a)(2)(A).
⁴⁹ *Id.* § 15483(a)(2)(B).
⁵⁰ *Id.* § 15483(a)(2)(A)(i).
⁵¹ *Id.* § 15483(a)(2)(A)(ii)(II).
⁵² *Id.* § 15483(a)(3).
⁵³ *Id.* § 15483(a)(4).



- ⁵⁴ *Id.* § 15483(a)(4)(A).
⁵⁵ *Id.* § 15483(a)(4)(B).
⁵⁶ *Id.* § 15483(a)(5)(A)(i).
⁵⁷ *Id.* § 15483(a)(5)(A)(iii).
⁵⁸ *Id.* § 15483(a)(5)(B)(i).
⁵⁹ *Id.* § 15483(b)(2)(A)(i).
⁶⁰ *Id.* § 15483(b)(2)(A)(ii).
⁶¹ *Id.* § 15483(b)(2)(B).
⁶² *Id.* § 15483(b)(3).
⁶³ *Id.*
⁶⁴ *Id.* § 15483(b)(4)(A).
⁶⁵ *Id.* § 15483(b)(4)(B).
⁶⁶ See 25 Pa. C.S. § 1222 (relating to SURE system).
⁶⁷ *Id.*
⁶⁸ *Id.*
⁶⁹ *Id.* § 1222(e).
⁷⁰ *Id.* § 1203(l).
⁷¹ *Id.* §§ 1323(c)(4)(i) & (5); 1328(d)(2); 1329(d); 1501(b)(2), (3) & (6); 1505(a) & (b); 1901(b)(4) & (c); 1903; 1904(a); and 1905(c)(2).
⁷² HAVA § 303(a)(4)(A), 42 U.S.C. § 15483(a)(4)(A).
⁷³ 42 U.S.C. § 15483(a)(2)(A)(ii)(I).
⁷⁴ *Id.* § 15483(a)(2)(A)(ii)(II).
⁷⁵ 25 Pa. C.S. § 1222(c)(2).
⁷⁶ *Id.* § 303(a)(5)(A)(ii), 42 U.S.C. § 15483(a)(5)(A)(ii).
⁷⁷ 42 U.S.C. § 15484.
⁷⁸ 25 P.S. § 3050(a.2).
⁷⁹ *Id.* § 3050(a).
⁸⁰ *Id.* § 3050(a.1).
⁸¹ 42 U.S.C. § 15483(b)(2)(A).
⁸² *Id.* §§ 15483(b)(2)(A)(i)(II) & (ii)(II).
⁸³ *Id.* § 15483(b)(3)(C).
⁸⁴ *Id.* §§ 15483(b)(3)(A) & (B).
⁸⁵ *Id.* § 15483(b)(2)(A)(ii).
⁸⁶ See HAVA § 303(b)(3), 42 U.S.C. § 15483(b)(3).
⁸⁷ 42 U.S.C. § 15483(b)(4).
⁸⁸ 4 Pa. Code § 183.1.
⁸⁹ 42 U.S.C. § 15483(b)(4).
⁹⁰ *Id.* § 15483(b)(4)(A).
⁹¹ *Id.* § 15483(b)(4)(A)(iv).
⁹² 42 U.S.C. §§ 15404(a)(2)(A) & (B).
⁹³ Pa. Election Code § 201(f), 25 P.S. § 2621(f).
⁹⁴ 42 U.S.C. § 15483(a)(1)(B).
⁹⁵ 25 P.S. § 3031.5.
⁹⁶ 42 U.S.C. §§ 15404(b)(1) & (2).
⁹⁷ *Id.*
⁹⁸ 42 U.S.C. § 15512(a)(1).
⁹⁹ *Id.* § 15512(a)(2).
¹⁰⁰ See Pa. Election Code § 1206.2, 25 P.S. § 3046.2.
¹⁰¹ 42 U.S.C. § 15512(a)(2)(C).
¹⁰² 25 P.S. § 3046.2(a).
¹⁰³ Pa. Election Code § 1206.2(c)(1), 25 P.S. § 3046.2(c)(1).
¹⁰⁴ *Id.* § 1206.2(c)(2), 25 P.S. § 3046.2(c)(2).
¹⁰⁵ 42 U.S.C. § 15512(a)(2)(E).
¹⁰⁶ See Pa. Election Code § 1206.2(c)(3), 25 P.S. § 3046.2(c)(3).
¹⁰⁷ *Id.* § 1206.2(c)(4), 25 P.S. § 3046.2(c)(4).
¹⁰⁸ *Id.* § 1206.2(c)(5), 25 P.S. § 3046.2(c)(5).



- ¹⁰⁹ *Id.*
¹¹⁰ *Id.*
¹¹¹ *Id.* § 3046.2(b)(1).
¹¹² *Id.* § 3046.2(b)(2).
¹¹³ *Id.* § 3046.2(b)(3).
¹¹⁴ *Id.* § 3046.2(b)(5).
¹¹⁵ Pa. Election Code § 1206.2(d), 25 P.S. § 3046.2(d).
¹¹⁶ *Id.* § 1206.2(e), 25 P.S. § 3046.2(e).
¹¹⁷ *Id.*
¹¹⁸ *Id.* § 1206.2(f), 25 P.S. § 3046.2(f).
¹¹⁹ 42 U.S.C. § 15405.
¹²⁰ *Id.* § 15406.
¹²¹ *Id.* §§ 15405-06.
¹²² *Id.* § 15405(a).
¹²³ *Id.* § 15406.
¹²⁴ Pa. Election Code § 205, 25 P.S. § 2625.
¹²⁵ *Id.* §§ 205(a) & (h), 25 P.S. §§ 2625(a) & (h).
¹²⁶ *Id.* § 205(h), 25 P.S. § 2625(h).
¹²⁷ *Id.* § 205(b), 25 P.S. § 2625(b).
¹²⁸ *Id.* §§ 205(c) & (d), 25 P.S. §§ 2625(c) & (d).
¹²⁹ *Id.* §§ 205(c) & (e)-(g), 25 P.S. §§ 2625(c) & (e)-(g).
¹³⁰ See 33 Pa. Bull. 1422 (March 15, 2003).
¹³¹ See 33 Pa. Bull. 1684 (March 29, 2003); 33 Pa. Bull. 1786 (April 5, 2003); 33 Pa. Bull. 1901 (April 12, 2003); 33 Pa. Bull. 2022 (April 19, 2003); 33 Pa. Bull. 2134 (April 26, 2003); 33 Pa. Bull. 2324 (May 10, 2003); 33 Pa. Bull. 2636 (May 31, 2003); and 33 Pa. Bull. 2946 (June 21, 2003).