HAVA Bulletin # 1

Commonwealth of Pennsylvania
Department of State
June 18, 2003

Subject: Federal Funding for Replacing Voting Systems in Pennsylvania:
Lever Type Voting Machines and Additional Requirements For All Counties

To: County Contacts for Elections

From: Monna J. Accurti, Commissioner
Bureau of Commissions, Elections and Legislation

As you know, the Help America Vote Act of 2002 (HAVA) contains requirements that all voting systems, including lever type voting machines and punch card electronic voting systems, must comply with in order to be used at federal elections and provides federal funding to replace them if they do not meet such requirements. Section 102 of HAVA requires each state to certify that it will use the federal funding to replace such machines in order to receive the federal funding. Please be advised that on April 28, 2003, the Commonwealth certified to the federal General Services Administration (GSA) that it has registered under Section 102 of HAVA to receive funding to be used to replace lever voting machines and/or punch card electronic voting systems in Pennsylvania. A copy of the certification filed by this office with the GSA is enclosed.

This Bulletin is the first of many bulletins to assist counties in understanding the requirements of HAVA as it relates to both state and county responsibilities. The purpose of this Bulletin is to clarify provisions of HAVA regarding lever voting machines and federal funding. This Bulletin is divided into two main sections; one that relates specifically to HAVA requirements for lever voting machines and the second one that applies to all counties. Future bulletins will address a variety of HAVA requirements, including HAVA requirements for other types of voting systems.

HAVA Requirements for Lever Voting Machines

Section 301(a)(2) of HAVA requires each voting system to “produce a permanent paper record with manual audit capacity....” [See 42 U.S.C. § 15481(a)(2)]. This record must be “available as an official record for any recount conducted with respect to any election in which the system is used.” Because lever voting machines do not provide a “manual audit capacity,” this office has concluded that HAVA requires the replacement of lever voting machines.

In addition, it is the opinion of this office that HAVA preempts the Pennsylvania constitutional and statutory provisions that require approval of a referendum before a county uses an electronic voting system. Pennsylvania law is preempted because it presents an obstacle to the accomplishment and execution of Congress’ command to replace lever voting machines. It is the opinion of this office that a county could not rationally justify adopting a new voting system for federal elections while using another system for state elections. Maintaining two voting systems would cause voter confusion and perpetuate a system that is less reliable in the conduct of an accurate and verifiable recount. Therefore, based on principles of federal preemption and equal protection, this office
believes that counties with lever voting machines cannot and should not place a referendum on their ballots to purchase new electronic voting systems.

The effect of the certification to the GSA is that federal funds will become available to assist counties in replacing lever voting machines. Information that the county boards of elections certified to this office indicates that 6,143 precincts in 26 counties used lever voting machines in the Commonwealth in the November 2000 election. Section 102(c) of HAVA authorizes an appropriation of $4,000 per precinct. However, recent information received from the federal government indicates the amount available to the states will be closer to $3,354 per precinct. Based on this most recent estimate, Pennsylvania will receive approximately $20 million in federal funding under Section 102 to replace lever machines. Additional federal funds might be available to assist counties under Title II of the Act, but Title II funds cannot be distributed to the states until the President has appointed the granting authority, the Election Administration Commission. Furthermore, Congress has promised additional federal funding over the next two years that might become available for lever voting machine replacement. However, please be aware that it is possible that Congress will not appropriate funds sufficient to replace all lever voting machines in your county. The money appropriated under Section 102 of HAVA as of this date is sufficient to cover only 25 to 35 percent of the total costs of purchasing lever voting machines in your county. Consequently, those counties with lever voting machines may need to fund some costs from their own budgets, including the use of a bond measure to cover a major portion of the costs of purchasing new voting systems to replace the lever voting machines.

Additional HAVA Requirements Applicable To All Counties

Acquisition of Accessible Voting Systems

In addition to the HAVA requirements regarding lever voting machines, Section 301(a)(3) of HAVA requires that at least one voting system in each precinct in every county “be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.” [See 42 U.S.C. § 15481(a)(3)]. To date, the Secretary of the Commonwealth has approved only two voting systems that meet this accessibility requirement in HAVA. The two electronic voting systems that have been approved for use in Pennsylvania are the Advanced Voting Solutions, WINvote, Version 1.5.0 (1.5) and the Diebold AccuVote-TS R-6, Version 4.3.14.

A list of the electronic voting systems that have been approved for use in Pennsylvania by the Secretary of the Commonwealth is available on the Department’s website, at www.dos.state.pa.us, and the reports issued by the Secretary are available upon request from the Bureau. The Secretary’s report approving a voting system also contains the number of voting units that are required in each
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precinct. Although some vendors claim that they have been approved, please check with this office to confirm whether a system has been approved for use in Pennsylvania.

The State Plan

To receive the additional federal funding authorized by Title II of HAVA, Sections 253 through 255 require each state to submit a State Plan, which is described in Section 254 of HAVA, at 42 U.S.C. § 15404. Last year, the General Assembly enacted Act 2002-150, which contained several provisions enabling Pennsylvania to implement HAVA, including the establishment of a State Plan Advisory Board (SPAB) to make recommendations to the Secretary of the Commonwealth regarding the development of the State Plan. Information regarding the SPAB may be found on the Department’s website. The Board finalized its recommendations to the Secretary on May 12, 2003. The Secretary will review the recommendations and issue a Preliminary Plan within the next few weeks. Three public hearings will be scheduled during July in Pittsburgh, Reading and Philadelphia.

Please share this important memo with your county commissioners and your solicitor. If you have any questions, please feel free to contact the Bureau at (717) 787-5280.

Enclosure

C: Mr. Douglas E. Hill, Executive Director
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Mr. Erick Coolidge, President
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