March 15, 2006

VIA: Email and Facsimile Transmission

RE: HAVA Requirements

Dear County Commissioners and County Election Officials:

As you know, effective this year, the Help America Vote Act of 2002 (HAVA) requires the Commonwealth and its county boards of elections to comply with a host of voting system standards promulgated by Section 301(a) of HAVA for all elections for Federal office. This year's General Primary Election on May 16, 2006 is the first election to which the HAVA requirements apply.

To meet those Title III HAVA requirements, the Commonwealth has reserved substantial Federal funds from the U.S. Election Assistance Commission (EAC). In exchange for the receipt of those funds, the Commonwealth has certified to the EAC that its (including its county boards of elections) will timely comply with all requirements of Title III of HAVA, including those in Section 301(a) prescribing voting system standards.

In addition, under HAVA Section 102, the Commonwealth has reserved nearly $23 million to support the replacement of lever voting machines and punch card voting systems with new HAVA-compliant systems. This requirement is to be in place no later than the first 2006 election held in the Commonwealth (i.e., the May 16, 2006 General Primary). In exchange for receiving these funds, the Commonwealth certified that it would replace all lever voting machines and punch card voting systems in time for the May 16 primary. The EAC has made it clear that Congress expects the EAC to enforce Section 102 of HAVA as written. Section 102 includes the requirement that a State must forfeit funds in the event that it does not replace lever voting machines and punch card voting systems in the manner and time that Section 102 requires.

The Department of State knows that the county boards of elections have been working diligently over the past several months to obtain voting systems for purchase or lease in time for use in the May 16 Primary despite very tight timelines. The Department understands that
county boards have been working in good faith with vendors of HAVA-compliant voting systems to comply with HAVA’s requirements and deadlines.

Nevertheless, over the past several days the Department has learned that some vendors have been unable to deliver the needed systems in accordance with the county’s timelines for use in the May 16 election. We also understand that at least one vendor has asked its county customers to defer the installation of their systems until after the election due to delays in the delivery of the systems.

The Department of State is now working to provide assistance to the counties that are facing these challenges. We are working closely with the counties to identify potential solutions and to ensure that the necessary systems are delivered in a timely manner.

HAVA’s requirements are clear. For the May 16 election, all counties must have a voting system in place that is compliant with HAVA’s requirements. The Department of State is committed to ensuring that all counties are able to meet this deadline.

In addition, you should know that the Federal agency charged with enforcing HAVA—DOJ—has the power to seek injunctive relief and other forms of relief for non-compliance with HAVA. In fact, DOJ recently took action against several states for their failure to comply with HAVA.

To protect your county from the risk of losing its Federal funding and facing DOJ enforcement action, we recommend that you review your procurement plans and contract terms to ensure that the vendor is committed to delivering the systems on time. If you have any concerns, please contact the Department of State immediately.

If your county is unable to secure the necessary systems, you should consider other options such as the use of provisional ballots or the implementation of a paper ballot system. It is important to act quickly to ensure that your county is able to comply with HAVA in a timely manner.

The Department of State is committed to working with you to ensure that your county is able to comply with HAVA and that the May 16 election is conducted in a fair and transparent manner. We encourage you to reach out to us if you have any questions or concerns.

Please let us know if you require any further assistance.

Sincerely,

[Signature]
might have with a non-performing vendor in favor of another vendor that has documented that it will be able to timely supply the voting equipment and services necessary for compliance with HAVA for the May 16 primary.

Finally, any county that has not yet entered into a contract or CostARS purchase order with a vendor must do so as soon as possible to comply with HAVA. In selecting a vendor, of course, it is of the utmost importance one consider only vendors that can guarantee the county that it will be able to perform in time to enable the county board of elections to meet its obligations under HAVA and to ensure that your county will remain eligible to receive its allocated portion of HAVA funds.

The Department of State urges each county to impress upon its vendor the urgency and gravity of this situation. Please convey to vendors that, if they are unable to perform in a manner that assures that Pennsylvania is in compliance with HAVA, these vendors risk being ineligible to do business in the Commonwealth.

The Department of State is ready and willing to aid your county to the greatest extent possible to assure your compliance with HAVA. In addition, the Department is in frequent contact with DOJ, which has expressed its willingness to assist in ensuring HAVA compliance.

Sincerely,

[Signature]

Harry A. YaniStella
Commissioner

cc: Douglas E. Hill, Executive Director
    County Commissioners Association of Pennsylvania