June 18, 2003

Dear County Contacts for Elections:

As many of you are aware, the Help America Vote Act of 2002 (HAVA) contains many provisions affecting election administration in the Commonwealth and the voting rights of our citizens. There is nothing more basic to our democracy than the right to vote. HAVA will help Pennsylvania modernize its voting system, guarantee that all registered electors have the opportunity to vote, and insure that voting systems are easy to use and record and count every vote cast. As the Chief Election Officer of Pennsylvania, my paramount concern in implementing HAVA is insuring that the citizens of the Commonwealth are provided the fairest and most equitable election system possible.

The modernization of voting equipment will be one of the major accomplishments of HAVA while advancing the right to vote by delineating requirements that all voting systems must meet. However, HAVA raises questions about the future of lever voting machines in Pennsylvania. In addition, HAVA requires counties to provide voting equipment in each precinct that is accessible to voters with a disability.

Attached you will find the first of many bulletins from the Department of State designed to assist counties in understanding the requirements of HAVA as it relates to both state and county responsibilities. Bulletin # 1, from Monna J. Accurti, Commissioner, Bureau of Commissions, Elections and Legislation, discusses in detail provisions of HAVA regarding lever voting machines and federal funding and contains the following specific information.

- All counties using lever voting machines in the Commonwealth must replace them no later than January 1, 2006.
- The opinion of my office is that a ballot question is not required to authorize replacement of lever machines.
- All counties are required to purchase at least one voting system for use in each precinct that is accessible for individuals with disabilities, including non-visual accessibility for the blind and visually impaired.
- The available of federal funding to assist counties with the purchase of replacement voting systems.
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
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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 
County Commissioners Association of Pennsylvania

Mr. Erick Coolidge, President 
County Commissioners Association of Pennsylvania