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January 15, 2008

The Honorable John Laird
Chair, Assembly Budget Committee
State Capitol, Rm 6026
Sacramento, CA 95814

The Honorable Denise Ducheny
Chair, Senate Budget and Fiscal Review Committee
State Capitol, Rm 5035
Sacramento, CA 95814

Dear Chairman Laird and Chairwoman Ducheny:

Attached please find a copy of a status report on Help America Vote Act (HAVA) activities carried out under the first year of Secretary of State Debra Bowen's tenure prepared pursuant to budget control language adopted under Item Number 0890-001-0890, Provision 4 of the 2006-07 Budget.

I am hopeful you will find the report informative and helpful in understanding the progress to date on HAVA activities, as well as the upcoming challenges. If there are any questions from your office about this report, please feel free to contact me at (916) 651-7837.

Sincerely,

Chris Reynolds
Deputy Secretary of State, HAVA Activities

Cc: The Honorable Dennis Hollingsworth, Vice Chair, Senate Budget and Fiscal Review Committee
The Honorable Roger Niello, Vice Chair, Assembly Budget Committee
The Honorable Curren Price, Chair, Assembly Elections and Redistricting Committee
The Honorable Ron Calderon, Chair, Senate Elections, Reapportionment and Constitutional Amendments Committee
The Honorable Juan Arambula, Chair Assembly Budget Subcommittee, State Administration
The Honorable Michael Machado, Chair, Senate Budget Subcommittee, State Administration
Elizabeth Hill, Legislative Analyst
Michael Genest, Director, Department of Finance

Status Report: Help America Vote Act of 2002 (HAVA) related activities

Pursuant to Budget Control Language, the Secretary of State is required to report, by January 15th of each year, on the following activities, until the Statewide Voter Registration Database, required by Section 303 of HAVA, is fully implemented. This status report is required to address the following areas:

- Election system security measures, including: (1) Source Code Review; (2) Parallel Monitoring; and (3) Poll Monitoring;
- The expected General Fund exposure for completion of HAVA compliance, including expected costs of administration; and
- Completion of the CalVoter database, including information on the costs associated with the use of contractors and consultants, the names of the contractors and consultants used, and the purposes for which contractors and consultants were used.

The information contained herein comprises the second annual status report:

Election system security measures

Source Code Review – The Secretary of State approves escrow facilities for deposit of source code and verifies the deposit of source code in the approved escrow facility. In addition, the Secretary of State:

- Monitors escrow of source code in approved CA facilities (EC §19103)
- Inspects and certifies escrow facilities (CA Code of Regulations, Title 2, §20630-20682)
- Receives and distributes trusted builds of source code to voting jurisdictions
- Maintains records of voting systems in use.

In 2006/07, the Secretary of State entered into an Interagency Master Agreement (IMA) with the University of California for the purpose of securing educational, training or research services in the areas of computer science and voting system technology, including the development of source code review guidelines, practices and protocols.

Pursuant to direction provided by the Legislature, which added funding to the Secretary of State's budget for source code review of voting systems during the 2006-07 budget process, the Secretary of State undertook a top-to-bottom review of voting systems in 2007. Using the funding provided by the Legislature, and funding from voting system vendors that was required as a condition of their prior voting system certification, the Secretary of State commissioned, under the auspices of the University of California, a top-to-bottom review of voting systems through the IMA. That review also included, for the first time, accessibility testing as a separate, specific component of the testing process.

The top-to-bottom review was launched in response to years-long serious, yet unresolved questions, about voting system reliability and security. At the center of the issues was the question of transparency. The reliance on proprietary source code for electronic voting systems, including direct-recording-electronic (DRE) machines, precluded open, public examination of the entirety of voting systems and many questioned the ability of these voting systems to protect the security of the vote.

Under the top-to-bottom review, each voting system vendor was offered the opportunity to subject its certified system to the top-to-bottom review, or to forgo the review based on representations that the vendor would bring forward a new, upgraded voting system for testing in time for use during the 2008 election cycle. The Secretary of State reserved the right to impose new,

additional conditions on the use of any existing voting system if the vendor failed to bring forward a new system for certification testing as promised.

On August 3, 2007, the Secretary of State released the results of the top-to-bottom review and issued decertification and recertification orders for the three voting systems subjected to the review. Reports and decertification and recertification orders issued in accord with the findings of the top-to-bottom review can be found on the Secretary of State's website at: http://www.sos.ca.gov/elections/elections_vsr.htm.

In short, computer scientists discovered, documented and, in some cases, demonstrated source code and security vulnerabilities that called into question the security of the voting systems. The review cast doubt on the ability to prevent exploitation of these vulnerabilities, or detect after the fact that these vulnerabilities had been exploited, to manipulate voting systems in ways that could affect the outcome of an election. Furthermore, the review found that malicious software code might propagate throughout an entire voting system, including infecting the central tabulation system. Based on these findings, the Secretary of State's decertification and recertification orders restricted the use of DRE voting units for two voting systems to one voting unit per polling place, which is the minimum number required by the HAVA 301 (a)(3) accessibility requirements. Where a county had previously deployed additional DRE voting units at the polling place, an optical scan balloting system was required to take its place. Additionally, the Secretary of State imposed new security measures on all systems to limit and prevent potential exploitation of voting system source code vulnerabilities. In collaboration with county election officials and voting system vendors, new use procedures were crafted to ensure consistent, uniform implementation of security measures. Finally, new, more stringent post-election auditing requirements of results produced by the voting systems examined in the review were put in place to ensure that tampering or errors did not produce incorrect outcomes in close contests.

The ultimate result of the Secretary of State's decertification and recertification orders are similar to policies that had been implemented earlier in the states of New Mexico and Florida, while the findings of the top-to-bottom review have been largely replicated and confirmed by similar reviews in Ohio and Colorado that occurred after the California review.

California's voting system testing and certification process has been modified to be consistent with and include the practices and procedures employed in the top-to-bottom review. Any new voting system brought forward for certification hereafter will be subjected to a testing and certification process that incorporates the protocols used in the top-to-bottom review. A number of voting system vendors have expressed the intent to bring forward new voting systems for certification in the future.

Parallel Monitoring – Parallel monitoring was not conducted during calendar year 2007, as there were no statewide elections held during that time.

Election Day Observation (Poll Monitoring) – Election Day Observation was not conducted during the 2007 calendar year, as there were no statewide elections held during that time.

Expected General Fund exposure for completion of HAVA compliance

Expected General Fund exposure for completion of HAVA compliance (including expected costs of administration) – The 2006 election cycle was the first election cycle during which the full complement of HAVA requirements fell due. In response to these new requirements, the Secretary of State executed contracts with county elections officials in 2005 related to specific mandates.

The voting system upgrade contracts, totaling an aggregate \$195 million for California's 58 counties, provide reimbursement to counties for the cost to upgrade local voting systems or to

purchase or lease new voting systems to meet new federal voting system standards. Although California was fully compliant with the HAVA requirements by the November 2006 general election, invoices are still being submitted for reimbursement. Counties are continuing to respond to needs that became more apparent in the aftermath of the 2006 election cycle. To date, just under \$108 million in reimbursements have been disbursed. No General Fund exposure is expected for current or future activities relating to voting system requirements.

An “interim solution” to meet the requirements of Section 303 of HAVA for a statewide voter registration database was implemented and is fully operational. No General Fund exposure is expected for the activities related to the interim solution.

Contracts totaling \$3,304,944 have been executed with California’s 58 counties to reimburse efforts to improve physical access to polling places for voters with disabilities. Thus far, \$1.9 million in claims have been approved and reimbursed. No General Fund exposure is expected for the activities related to improving polling place accessibility.

The following ongoing needs are associated with the administration of the HAVA program:

Internally, ongoing Secretary of State staffing costs are estimated at \$1.7 million for the next two fiscal years. This funding will support the work of the HAVA coordinator, Elections Division staff, voting system testing and certification personnel, and administrative support (budgeting, accounting, and contracting services) for:

- Tracking and implementing changes to federal voting system testing and certification protocols and voting system standards;
- Activities related to further modifications to the statewide voter registration database project;
- Review and payment of claims for reimbursement against voting system upgrade contracts and contracts executed to improve polling place accessibility.

While these near-term costs associated with HAVA implementation are a certainty, long-term estimates are difficult to project at present because they may be affected by evolving federal standards and programs. In fact, recent developments point to the potential distribution of new HAVA funding in 2008 and strong Congressional interest in enacting new electoral reform laws that directly impact HAVA this year.

Completion of CalVoter database

Completion of the CalVoter database (including information on the costs associated with the use of contractors and consultants, the names of contractors and consultants used, and the purposes contractors and consultants were used) – As previously indicated, California achieved “interim compliance” with HAVA Section 303 requirements.

At present, the Secretary of State is assessing the most cost-effective means to create and maintain the required statewide voter registration database. For the foreseeable future there is a continuing need for internal Secretary of State staffing including:

- Elections Division (program) support to maintain the interim database and to assist in planning for a fully-compliant voter registration database;
- Information Technology Division (technical) support to maintain the interim database and to assist in planning for a fully-compliant voter registration database;
- Administrative support (budgeting, accounting and contracting services) for activities related to planning and executing an RFP and a contract for modifications to the statewide voter registration database.

The potential project cost and ongoing costs for a long-term solution are highly dependent on the business rules, program requirements and vendor response to the procurement process. The approved Feasibility Study Report (FSR) for the project proposed a “business-based” procurement, which will allow vendors to propose a variety of alternative solutions to meet the state’s business, functional requirements. A Request for Proposal (RFP) has been produced and the procurement process for the VoteCal project is now under way. Cost projections in that FSR were based upon the best available estimates for one of the most costly acceptable alternatives. Current and near-term costs estimates in that FSR for contractor and consultant needs to support the long-term project, include:

- A contract project manager (projected costs \$1,071,000 – actual contract costs are \$1,043,440 with Kiefer Consulting for services of Linda Wasik as project management consultant);
- Consultant support for drafting the project RFP (projected costs \$399,000 – actual contract costs are \$308,880 with R & G Associates for services of Linda Van Dyke)
- Project administrator/librarian (projected costs \$307,500);
- Technical Architect (projected costs \$1,122,000)
- Database Administrator (projected costs \$810,000)
- Application developers (projected costs \$810,000)
- Required Independent Project Oversight Consulting (projected costs \$768,750 – actual contract costs are \$762,900 with Continuity Consulting for services of Joan Rene, Tim Jacobs, and Christine Walker);
- Required Independent Verification and Validation Consulting (projected costs \$3,402,813 – actual contract costs are \$846,715 with Information Integration Innovation & Associates for services of Dr. Michael Cox, Arthur G. Mulligan, Al Pangelinan, and Paula Grose)
- Contractor(s) to modify existing DMV, DHS and CDCR interfaces, if necessary (projected costs \$2,100,000) ; and
- A primary system integration vendor contract (projected costs \$32,684,310).

Only the contracts for the project manager, RFP and vendor consultant, Project Oversight, and Independent Verification and Validation consultants have been executed to date.

Contracts for the primary system integration vendor and for the consultants to modify interfaces will not be executed until the procurement process has been completed, and a Special Project Report (SPR) is submitted to and approved by the Department of Finance. The need for some of the other contractors may be reduced or eliminated, depending upon the solution proposed by the selected system integration contractor.

The costs identified above are funded with federal HAVA resources allocated to California. Potential General Fund exposure is impossible to project at this time with any certainty. At present, the operation of the statewide database relies heavily on integration and synchronization with local election management systems. The costs to maintain and operate local EMSs are the responsibility of the counties. Depending on the long-term solution that is developed, the state may incur some future General Fund liability associated with continued operation and maintenance of the statewide voter registration database.