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January 15, 2010

The Honorable Noreen Evans, 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 Chairwoman Evans and Chairwoman Ducheny:

Attached please find a copy of a status report on the Help America Vote Act (HAVA) activities carried out over the past calendar year pursuant to budget control language adopted under Item Number 0890-001-0890, Provision 4 of the 2009-10 Budget.

I hope you will find the report informative and helpful in understanding the Secretary of State's 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 Robert Dutton, Vice Chair, Senate Budget and Fiscal Review Committee
The Honorable Jim Nielsen, Vice Chair, Assembly Budget Committee
The Honorable Paul Fong, Assembly Elections and Redistricting Committee
The Honorable Loni Hancock, Chair, Senate Elections, Reapportionment and Constitutional Amendments Committee
The Honorable Juan Arambula, Chair Assembly Budget Subcommittee, State Administration
The Honorable Mark DeSaulnier, Chair, Senate Budget Subcommittee, State Administration
Mr. Mac Taylor, Legislative Analyst
Ms. Ana Matosantos, 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 System, 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 the expected costs of administration; and

- Completion of the VoteCal system, 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 fourth annual status report.

Election system security measures

Source code review – The Secretary of State approves escrow facilities that the voting system vendors are required to deposit their source code with 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 approves escrow facilities (CA Code of Regulations, Title 2, §20630-20682)
- Receives and distributes trusted builds of source code to county elections officials
- Maintains records of voting systems in use

During a 2009 regular, biennial review of approved escrow facilities, issues of noncompliance with escrow facility standards were discovered at one facility. The certification for this escrow facility has been revoked.

In 2009, the Secretary of State also concluded an investigation into an error that was detected in one version of the Premier Election Solutions, Inc., voting systems. The issue was brought to the attention of the Secretary of State on December 3, 2008, by the Registrar of Voters in Humboldt County, who discovered a discrepancy between the certified election results and the number of ballots tallied in a separately conducted "election-transparency project" carried out in conjunction with a private, non-profit entity. The Secretary of State investigation chronicled two issues:

1) Omission of 197 tallied ballots from official election results (which were later corrected) as a result of an error in the version of the voting system tally software used by Humboldt County, and
2) Deficiencies in the voting system's audit logs discovered while investigating the software error issue.

As a result of these findings, the Secretary of State conducted a March 17, 2009, public hearing and subsequently withdrew approval of the use of the defective version of the voting system tally software for use in California. Working with the U.S. Election Assistance Commission (EAC), which is responsible for federal certification of voting equipment and serves as a national clearinghouse for election-related information, the Secretary of State provided a complete copy of its report for posting on the EAC's Voting System Reports Clearinghouse website pursuant to Help America Vote Act (HAVA) Section 202(1).

Additional information regarding this issue can be found on the Secretary of State's website at www.sos.ca.gov/elections/elections_vs_premier.htm

As reported in prior year reports, 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 HAVA 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. Based on the findings in the review, the Secretary of State withdrew approval of the three voting systems subjected to the review, and simultaneously re-approved their use, subject to stringent new conditions. Reports and the withdrawal/approval orders issued in accordance with the findings of the top-to-bottom review can be found on the Secretary of State's website at www.sos.ca.gov/elections/elections_vsr.htm.

In short, computer scientists discovered, documented and, in some cases, demonstrated source code and physical 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 to detect after the fact that these vulnerabilities had been exploited. In fact, these vulnerabilities were shown as a path 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 approval orders restricted the use of two versions of DRE voting machines (the Sequoia Edge I and II v.5.0.24 and the Premier TSX v. 4.6.4) to allow only one such voting machine 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 precinct, counties had a choice to provide optical scanners in the precincts or at a central location to tally votes cast on mark-sense paper ballots. 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.

The move away from DRE voting that followed the Secretary of State's top-to-bottom review reflects a similar trend in states such as New Mexico, Florida, Iowa and Maryland. The findings of the top-to-bottom review have been largely replicated and confirmed by similar expert testing and analysis of electronic voting systems carried out by the states of Ohio and Colorado.

California's voting system testing and approval 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 approval is now subject to a testing and approval process that incorporates the protocols for source code review used in the top-to-bottom review.

The Secretary of State also plans to hold a public hearing on February 8, 2010, to review how HAVA has changed the voting system landscape and to explore the future of voting systems, including issues such as the product life span of current voting systems, the development of open source software, and alternatives such as all-mail elections. The Secretary is working with county elections officials in shaping the agenda, and several local elections officials will be invited to participate in the hearing.

Parallel monitoring – There was no regularly scheduled statewide election during this reporting period, and no parallel monitoring was conducted for the May 19, 2009, statewide Special Election. Reports on parallel monitoring programs previously conducted are posted on the Secretary of State website at www.sos.ca.gov/elections/voting_systems/historic/historic_pm.htm

Election Day observation (poll monitoring) – There was no regularly scheduled statewide election during this reporting period, and no Election Day Observation program was conducted for the May 19, 2009, statewide Special Election. HAVA funds cannot be used for non-federal elections. Reports on Election Day Observation programs previously conducted are posted on the Secretary of State website at www.sos.ca.gov/elections/voting_systems/historic/historic_pm.htm

Expected General Fund exposure for completion of HAVA compliance (including expected costs of administration)

- Voting Systems

The voting system upgrade contracts for California's 58 counties, provide reimbursement to counties for the cost to purchase or lease new voting systems to meet new federal voting system standards or to upgrade local voting systems. No General Fund exposure is expected for current or future activities relating to voting system requirements.

- Statewide Voter Registration System (VoteCal)

An "interim solution" to meet the requirements of Section 303 of HAVA for a statewide voter registration system was implemented pursuant to a Memorandum of Agreement (MOA) executed with the U.S. Department of Justice (US DOJ) – the enforcement authority for HAVA – on November 2, 2005. The interim solution voter registration system is still in use at this time. No General Fund exposure is expected for the activities related to the interim solution.

Under the terms of the MOA, the Secretary of State is required to pursue a long-term solution to meeting HAVA Section 303 requirements. The Secretary of State is now in the design phase of that project, called VoteCal. Additional details about the project are provided later in this report.

- Polling Place Accessibility

The Secretary of State has undertaken projects to improve polling place accessibility pursuant to a grant program conducted under HAVA Section 261, which is administered by the federal Department of Health and Human Services (DHHS). The Secretary of State executed a $206,937 contract with the Department of Rehabilitation, the state agency with expertise on physical accessibility standards for buildings, to update polling place accessibility guidelines required by the federal Voting Accessibility for the Elderly and Handicapped Act of 1984 and referenced in California Elections Code section 12280. This effort, conducted in collaboration with county elections officials and a Voting Accessibility Advisory Committee (VAAC) named by the Secretary of State is continuing work on this multiphase program, which includes development of guidelines, a survey tool to be used by county officials for assessing accessibility, and a training program for county elections officials on the new guidelines and the surveying tool for polling places.

Additionally, the Secretary of State initiated two competitive grant programs for counties with funding provided by the federal DHHS. Through these programs, $2,396,600 was awarded to 21 counties for use in categories specified by DHHS, including:

- Improving physical accessibility to polling places for voters with disabilities
- Improving access and participation by voters with disabilities
- Training elections officials on promoting access and participation by voters with disabilities
- Providing information on opportunities for participation to voters with disabilities

Completion of these efforts to improve polling place accessibility have been timed to coincide, as closely as practicable, with the administration of the 2010 and 2012 election cycles.

- Administration of the HAVA program

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 each of the next two fiscal years. This funding will support the staff working on HAVA activities, a portion of the cost of 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 system project
- Review and payment of claims for reimbursement against voting system upgrade contracts and contracts executed to improve polling place accessibility
- Reporting to state and federal agencies as required
- Updating the State Plan to incorporate plans for use of additional federal funding under HAVA
- Coordinating activities relating to audits of the HAVA program

While these near-term costs associated with HAVA implementation are a certainty, long-term estimates are difficult to project because they may be affected by evolving federal standards and programs, including new oversight activities. Furthermore, Congress has appropriated new HAVA funding. The EAC – the oversight authority for HAVA – has notified the Secretary of State that California is entitled to $24,133,942 in new funding. In order to qualify for the funding, the state must update its HAVA State Plan, a process that is now underway. Updating the HAVA State Plan requires the involvement of an advisory committee comprised of local elections officials and representatives from voting rights advocacy groups. This group met during 2009 and is expected to conclude its work in early 2010. After garnering and incorporating the input from the advisory committee into the State Plan update, the draft State Plan must be published and available for public comment for 30 days. After accepting and responding to public comment, the State Plan is forwarded to the EAC for publication in the Federal Register for 30 days. Following that process, and after submission to the EAC of a specified certification, California will be eligible to receive its allocation of funding, which will then be subject to legislative appropriation through the state budget process before it can be expended.

During 2009, the EAC's Office of Inspector General conducted the second federally sponsored audit of the HAVA program. The scope of the audit dates back to the inception of the program in California. Final resolution of the audit findings and recommendations are pending before the EAC, which is expected to act some time before February 15, 2010.

Completion of VoteCal system (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 to establish a statewide voter registration system. However, under the MOA executed with the US DOJ, California is required to implement the long-term, fully compliant VoteCal project. During this reporting

period, the Secretary of State successfully initiated the VoteCal project. The history of the VoteCal project to date includes:

- A Secretary of State Feasibility Study Report (FSR) dated March 20, 2006, for the statewide voter registration system project (VoteCal) was approved on April 14, 2006, and an updated Special Project Report (SPR) on VoteCal was issued August 15, 2007.
- A Request for Proposal to solicit vendor bids for VoteCal was issued on December 13, 2007. A solution-based procurement process, as provided for in state law, was used for the project.
- Under the auspices of this process, potential bidders notified the Secretary of State by December 31, 2007, of the intent to bid on the project and thereafter engaged in a series of discussions with Secretary of State staff under the direction of Department of General Services (DGS) personnel in preparation for submission of a bid. During this process, in response to bidder questions and to clarify the RFP, addenda were issued.
- The final addendum to the RFP was issued on December 31, 2008, and a deadline for submission of bids was set for January 29, 2009.
- Under the direct supervision of DGS personnel, a team of evaluators analyzed three bids submitted against the pre-established criteria defined in the RFP. Of the three bids, one vendor emerged as eligible to proceed to cost opening.
- Cost opening for the bids occurred on March 26, 2009.
- A Notice of Intent to Award a contract was issued on April 24, 2009.
- A May 1, 2009, deadline for bid protests passed without a protest being received.
- As required by the state procurement process, a Special Project Report (SPR) describing the project in greater detail based upon the winning bid was completed and the SPR submitted to state control agencies, including the Department of Finance and Office of the Chief Information Officer on June 23, 2009, which provided copies to the Legislature.
- Meetings with county representatives to describe the project, answer questions and receive input commenced on July 17, 2009. These communications continued, and will continue throughout the project lifecycle.
- The Legislature formally received the SPR on July 23, 2009 from the Department of Finance, and approved the project on August 21, 2009.
- An amended Spending Plan requesting expenditure authority for VoteCal costs for the fiscal year 2009-10 was received by the Legislature from the Department of Finance on August 6, 2009, and approved by the Legislature on August 25, 2009.
- The contract for the VoteCal project was fully executed with the winning bidder – Catalyst Consulting Group, Inc. – on September 8, 2009.
- The project completed the Planning Phase – Phase I – on December 11, 2009.
- The project is in Phase II – Design.

For the foreseeable future there is a continuing need for internal Secretary of State staffing including:

- Elections Division (program) support to maintain the interim voter registration system and to assist in planning for the fully-compliant VoteCal voter registration system
- Information Technology Division (technical) support to maintain the interim solution and to assist in planning for the fully-compliant VoteCal voter registration system
- Administrative support (budgeting, accounting and contracting services) for activities related to planning and executing contracts for development and deployment of VoteCal

Current costs for contractor and consultant needs to support the VoteCal project, include:

- A contract project manager: A contract was issued for $1,043,440 to Kiefer Consulting for services of Linda Wasik as project management consultant for fiscal years 2006-2008. Actual invoices under this contract, which expired June 30, 2009, totaled $780,290, of which $302,370 was expended in 2009. In July 2009, a contract was issued for $308,752 to VIP Consulting for services of Fred Wood as a project management consultant through December 31, 2010. In 2009, $64,140 was expended under this contract.
- Consultant support for drafting the project RFP: A contract was issued for $377,865 to R & G Associates for services of Linda Van Dyke and Jeff Sheel from May 2007 through September 2009. Actual invoices under this contract totaled $159,165 in 2009.
- Project administrator/librarian: A contract was issued for $243,168 to Comsys for services of Melissa Crowley from December 2007 through December 31, 2009. Actual invoices under this contract totaled $226,950, of which $108,528 was expended in 2009. (A replacement contract will be issued to cover services through June 30, 2012.)
- Technical Architect: A contract was issued for $328,455 to R Systems, Inc. for services of Pooja Deshmukh from November 2, 2009, through June 30, 2011. No invoices have been submitted at this time.
- Required Independent Project Oversight Consulting: A contract was issued for $762,900 to Continuity Consulting for services of Joan Rene, Tim Jacobs, and Christine Walker from May 2007 to December 31, 2009. Actual invoices under this contract totaled $566,525, $224,978 of which was expended in 2009. Effective January 1, 2010, a new contract has been issued to Meta Vista Consulting Group for $98,550 for the services of Payson Hall and Rochelle Furtah through June 30, 2012.
- Required Independent Verification and Validation Consulting: A contract was issued for $846,715 with Information Integration Innovation & Associates for services of Dr. Michael Cox, Arthur G. Mulligan, Al

Pangelinan, and Paula Grose from May 2007 through December 31, 2010. Actual invoices under this contract totaled $156,955 in 2009.

- A primary system integration vendor contract: A deliverables-based contract was issued September 1, 2009, for $18,177,000 to Catalyst Consulting Group for a fully operational system. The bid included the for the services of Scott Hilkert, Don Westfall, Kurt Schwartz, Matt Benton, Kalyn Ferris, and Timothy Smith to serve in lead roles for the project. Actual invoices under this contract totaled $908,850 in 2009.

Other contracts yet to be issued include:

- Quality Assurance Manager: Projected costs are $702,000 for fiscal years 2009-10 through 2011-12
- Web language translation: Projected costs are $79,152 for fiscal years 2010-11 through 2011-12
- Security Auditor: Projected costs are $40,000 for FY 2010-11

The costs identified above are funded with federal HAVA money allocated to California. Long-term General Fund exposure for VoteCal maintenance and operation costs is difficult to project at this time with any certainty. Right now, the operation of the statewide voter registration system relies heavily on integration and synchronization with local EMSs. The costs to maintain and operate local EMSs are the responsibility of the county elections officials. The state will incur some future General Fund liability associated with continued operation and maintenance of the VoteCal statewide voter registration system at the point HAVA funding is no longer available. However, when that will occur depends on the cost of operation and maintenance and the cost of deploying the project itself. The winning bid, including one year of maintenance and operation costs, total approximately $51 million, which is less than the projected $65.5 million estimated development and deployment costs included in the approved 2007 SPR.

This means, assuming that the VoteCal comes in at the expected cost of $51 million, more than $14 million will be left in existing HAVA funds that could be used for VoteCal maintenance and operation. Given the current estimated cost of $3.2 million per year in maintenance costs, this means existing HAVA funds could pay for four additional years of maintenance and operation before a General Fund request would be made.