

LEGISLATIVE AUDIT DIVISION

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MEMORANDUM

To: Legislative Audit Committee Members

From: Jim Pellegrini, Deputy Legislative Auditor, Performance Audits

Date: August 25, 2003

Re: Voter Registration Process, Office of the Secretary of State

Introduction

For the 2003 biennium, the Legislative Audit Committee prioritized a performance audit of the voter registration process (02P-06). Voter registration was identified as a potential audit due to complaints from the public regarding lengthy process time frames and the involvement of too many state and local government entities.

This memo will address the impact on Montana's voter registration process resulting from the Help America Vote Act (HAVA) passed by congress in 2002. HAVA was developed in response to problems with the 2000 general elections. The act requires all states comply with federal laws relating to registration of voters and administration of elections. HAVA implementation resulted in revisions to Montana's election laws during the 2003 legislative session, including changes to voter registration procedures. We believe these ongoing developments have reduced the potential for an effective audit of the voter registration process at this time.

The Help America Vote Act (HAVA)

HAVA provides an appropriation of \$3.9 billion over three years to allow states to replace antiquated election equipment and implement changes in election administration. HAVA establishes requirements for states in the following areas:

- **Voting system standards.** States must adopt measures to ensure voting systems (the method used to cast a vote) allow voters to verify their ballot for accuracy, make necessary changes, and be notified if they over-vote. Other standards include system audit capacity, accessibility for disabled voters, maximum error rates for election equipment, and a uniform definition of what constitutes a valid vote.
- **Provisional voting requirements.** Requirement for states to allow voters to cast a provisional ballot if they do not appear on the official registration list for the polling place. The eligibility of voters casting provisional ballots is then verified by election officials before their vote is counted. States must also provide a free access system to allow voters casting provisional ballots to determine if their vote was counted.

- **Voting information requirements.** All polling places display specified voting information/instructions.
- **Statewide voter registration list.** The Secretary of State must establish a single, uniform, centralized and interactive voter registration list. The list should be administered at the state level and should contain information for every eligible voter. Other system requirements include coordination with other state agency databases, secure accessibility for all state/local election officials, maintenance procedures allowing for removal of ineligible or deceased voters, and safeguards to prevent removal of eligible voters.
- **Voter registration procedures.** States are required to establish procedures ensuring voter identification is verified during registration. Procedures should include checking driver license or social security numbers, verifying identification against state driver license database information, and ensuring state driver license information is crosschecked with the federal Social Security Administration.
- **Complaint procedures.** States must establish uniform, non-discriminatory administrative complaint procedures open to all voters.
- **Absentee voting.** States must designate a single official with responsibility for providing information on absentee ballots for military personnel, overseas voters and others. The states should collect and report statistics relating to absentee voting.

Under HAVA, various deadlines were established for states to comply with the requirements. These deadlines run through January 1, 2007. To receive some of the funding appropriated under the act, states are required to develop and submit a state plan detailing how HAVA requirements are to be implemented.

Montana's Response to HAVA

Montana has already responded to the new HAVA requirements through legislation. During the 2003 session, the Legislature passed five bills relating directly to the implementation of HAVA. These bills are summarized as follows:

- **House Bill 87** – prohibits the use of punch card voting systems after December 31, 2003.
- **House Bill 155** – provides the Secretary of State with authority to apply standards and approve voting systems used by counties. HB 155 also sets parameters for determining what constitutes a valid vote.
- **House Bill 190** – establishes a statewide voter registration list. HB 190 also establishes information and identification requirements for voter registration, procedures for provisional voting and voter information at polling places.
- **House Bill 201** – clarifies and simplifies the procedures for absentee ballots and requires the Secretary of State to compile and report statistics for absentee voting.
- **House Bill 548** – establishes a federal special revenue account for the deposit of funds intended for HAVA implementation.

In addition to statutory revisions, the Secretary of State's office and an Election Reform Advisory Committee are pursuing further changes in Montana's election system. The

advisory committee consists of 20 members appointed by the Secretary of State to represent interest groups and government entities affected by HAVA. The Secretary of State and the advisory committee have developed a preliminary state plan outlining the actions Montana has taken or intends to take to implement HAVA requirements.

Montana's Preliminary State Plan

The preliminary state plan was published in June 2003 and contains information on the initiatives and actions Montana is pursuing. The plan projects the likely costs of HAVA implementation. Montana has already received \$5 million from the federal government to implement HAVA. Further payments of \$4.1 million are expected. This additional funding must be met with a state match of 5 percent (\$205,000). The Secretary of State's office has established a total budget for HAVA implementation of \$9,305,000. Some of the main initiatives and their estimated costs are discussed below:

- **Replace punch card voting machines (\$350,000)** – Five Montana counties are required to replace punch card voting machines used in the 2000 general election.
- **Improve voting system accessibility (\$2.8 million)** – The state will purchase around 700 direct recording electronic devices to improve voting system accessibility for the disabled.
- **Voter education and election official training (\$930,500)** – The Secretary of State's office will expand existing voter education programs and provide additional training to local election officials in new HAVA requirements.
- **Statewide voter management system (\$3,256,750)** – The Secretary of State will implement, administer and maintain a centralized statewide voter management system. The state will issue a request for proposal for a vendor to develop a system, train users, and provide initial maintenance.
- **Precinct counters matching funds (\$558,300)** – Grant assistance will be provided to counties for purchase of precinct counters. Grants would depend on county match.
- **Administration costs (\$205,500)** – Extra HAVA responsibilities assumed by the Secretary of State's office will result in increased administrative costs. The Secretary of State's planned budget for administrative costs will be used as the 5 percent state match for federal funding.
- **Future needs (\$1,203,950)** – Federal funding for HAVA is not contingent on spending in a specified fiscal year and can be retained by the state to cover future costs.

Conclusions

Statutory revisions made during the 2003 legislative session provide a foundation for Montana to implement the changes necessary to achieve compliance with HAVA requirements and develop further initiatives relating to the election system. Montana has already received an initial \$5 million payment and will be able to access further federal funding following approval of the preliminary state plan.

Effectiveness of Auditing at this Time

Given the major changes in the electoral system currently underway, it is questionable whether a performance audit of the voter registration process could be effective at this time. Implementing HAVA will significantly change the registration process, as well as other aspects of the election system. It will be difficult to identify audit objectives and formulate conclusions and relevant recommendations for a process, which is undergoing such significant change.

However, the implementation of HAVA may not address all the concerns relating to the voter registration process. Neither is effective implementation of the Act a foregone conclusion. The effect of federal legislation such as HAVA may be an issue for further review. At this stage there are several items which remain unresolved:

- It is unclear what level of federal funding will be available for implementation. The Secretary of State anticipates an additional \$4 million in federal grants. However, this funding is contingent on acceptance of the state plan by federal authorities.
- HAVA compliance will necessitate spending on projects including a major equipment purchase/maintenance contract, and the development of a new statewide information system. Expenditures over budget in these areas could cause problems if further federal support is unavailable or insufficient.
- Support and maintenance of HAVA-related programs could involve significant costs over the long-term for both state and local government entities. Montana has budgeted approximately \$1.2 million for future needs in implementing HAVA, but it is unclear if this amount will be sufficient.
- The effect of HAVA on Montana elections in terms of delivering efficiencies in the registration process or increasing voter turnout is also unclear. The requirements were formulated at the national level to address many needs. What may be appropriate for densely populated, urbanized states may not be appropriate for Montana.

Proposed Action

We do not believe an effective performance audit of the voter registration process could be conducted at this time. We believe the Audit Committee would be better served through periodic monitoring and updates. We can keep track of continuing developments and monitor progress on the implementation of HAVA and its effects. We can then provide the committee with periodic update reports. If, during the course of this monitoring, the Committee believes the issues of untimely and cumbersome registration procedures are resolved, we can remove the audit from the potential audit priority list.