

LEGISLATIVE AUDIT DIVISION

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MEMORANDUM

TO: Legislative Audit Committee Members
FROM: Angie Grove, Deputy Legislative Auditor
DATE: June 2009
CC: Linda McCulloch, Secretary of State
RE: Performance Audit Follow-up (09SP-11): The Help America Vote Act and Related Elections Issues

INTRODUCTION

In August 2007, we presented our performance audit report *The Help America Vote Act and Related Elections Issues*. This report addressed Montana's progress in implementing the federal Help America Vote Act (HAVA) and other recent changes in elections laws and administration. The audit report contained 14 recommendations addressed to the Office of the Secretary of State. In December of 2008, we began gathering information on the progress of recommendation implementation. This memo summarizes the results of our follow-up work.

Overview

Audit recommendations addressed multiple issues relating to the administration of the state's elections laws and the status of changes made under HAVA. All audit recommendations were addressed to the Office of the Secretary of State and generally address improvements in internal policies and procedures, training provision for election workers, coordination/standardization between different counties, and the adoption of a more long-term management approach for certain elections issues.

Overall, we found the Office of the Secretary of State has implemented or is in the process of implementing all of the audit recommendations. Progress has, in some cases, depended on cooperation from county governments or other state agencies.

BACKGROUND

HAVA was passed by Congress in 2002, largely in response to issues with the 2000 presidential elections. HAVA was developed to remedy these issues by imposing uniform standards on state administration of elections. Montana elections are administered by county Clerk and Recorders or Election Administrators. The state's chief election officer is the Secretary of State (SOS), whose office is responsible for implementing state elections laws, providing support to county election officials, and officially certifying election results.

Montana's implementation of HAVA has been ongoing since 2002 and has involved both the SOS office and local election officials. HAVA election reform has involved changes in state statutes and administrative rules, establishing new election functions, competencies and procedures, training elections workers in new election duties, purchasing new elections equipment, and investing in new information and other systems resources. In addition to HAVA provisions, our audit also addressed other recent changes in Montana's elections laws. These additional changes have included the introduction of late registration (including registration on Election Day), and the expansion in availability of absentee voting. Our audit objectives were developed to address the following aspects of HAVA implementation and other election reforms:

- ▶ Security and stability of the statewide voter registration system
- ▶ Implementation status of new voter identification and information requirements
- ▶ Assessment of the impacts of late registration
- ▶ Changes in county voting systems and equipment
- ▶ Provisional and absentee voting
- ▶ Accessibility for individuals with disabilities
- ▶ Funding requirements for HAVA and other election reform efforts

Congress appropriated almost \$3 billion to fund HAVA election reforms in the states. Funding was generally allocated based on state populations and polling places. Montana has received in excess of \$17 million to fund HAVA-related activities. The majority of HAVA-related expenditures were made between the 2004 and 2006 general elections when most of the federal HAVA deadlines came into force. States were permitted significant latitude in how they implemented HAVA and how funding was allocated between different activities.

Roughly two thirds of Montana's proposed expenditures were for costs relating to polling place and voting accessibility for people with disabilities, and development of the statewide voter registration system. Remaining funds were budgeted for the purchase of new voting systems equipment for counties, education, outreach and training activities for the voting public, election officials and poll workers, administrative expenditures in the SOS office, and future contingencies and ongoing maintenance costs.

The following summarizes follow-up audit work and the implementation status of each recommendation.

Recommendation # 1

We recommend the Secretary of State's office work with counties to develop a statewide data integrity improvement plan addressing the updating and maintenance of voter information and uniform implementation of Statewide Voter Registration System controls throughout the state.

Implementation Status – Partially Implemented

The SOS office introduced a statewide voter registration system (SVRS) data integrity improvement plan in March 2008. However, full development and implementation of this plan continue to be hindered by difficulties coordinating interfaces between SVRS and other state databases. Our original audit findings identified problems with voter information in SVRS, including active registrations for deceased and felon voters, duplicate records, and inaccuracies in voter date of birth records. Progress in addressing these circumstances is discussed as follows:

- ▶ Deceased/felon registrations – audit follow-up work identified continuing issues with deceased and felon registrations not being removed from the SVRS. County election officials are supposed

to cancel registrations for deceased voters or those incarcerated following a felony conviction, after confirmation of the death or incarceration. The procedure for canceling these records relies on information supplied to the SOS office by the Department of Corrections (incarcerated felons) and the Department of Public Health and Human Services (vital statistics records of death). According to current Montana law, the county election administrator is responsible for canceling voters from the rolls. Current law was passed long before the statewide voter registration system was implemented in 2006. The SOS office relies on counties to cancel the necessary records based on a manual process involving review of reports provided by the interface agencies. These reports have not always been provided on a consistent basis and the SOS office has only recently activated an automated process within SVRS to assist counties in conducting the cancellation process. Once counties receive guidance/training on the new system functionality, there is likely to be some improvement in removal of deceased/felon voter records, but the process will still depend on action by county election officials and the SOS office will still need to conduct some kind of monitoring and reconciliation of canceled records.

- ▶ Duplicate records – the SOS office has made good progress in reducing the number of duplicate records within the SVRS. Because of situations where voter records transfer between counties, and because of the potential for overlapping elections, a residual level of temporary duplication will always be present in SVRS records. However, efforts by the SOS office and counties appear to have reduced duplicate registrations to the minimum level possible.
- ▶ Date of birth records – the SOS office has also made good progress in improving the accuracy of voter date of birth records in SVRS. Audit follow-up work showed significant reductions in the number of SVRS voters with inaccurate date of birth records.

Recommendation # 2

We recommend the Secretary of State's office improve controls over Statewide Voter Registration System access by:

- A. Developing procedures to comprehensively review access to the SVRS to ensure authorized individuals have access appropriate to their job duties; AND
- B. Working with counties to develop policies and procedures to ensure system users can be uniquely identified.

Implementation Status – Implemented

The SOS office has implemented new procedures to improve controls over access to the SVRS. Counties are now required to coordinate creation and editing of user accounts with the SVRS help desk. Help desk security procedures include a defined process for verifying user identities and enforcing password rules. Under the new procedures, the ability to change user access status is also limited to responsible county election administrators. Our follow-up work involved reviewing current system user records and verifying changes in procedures had been implemented. Overall, we found access was being assigned appropriately based on job duties. All the users were also identified with individual user access numbers, but some numbers were not associated with specific individual identities (user names). The Secretary of State has specified in the procedures and provided direction to the counties to ensure that user access is assigned to specific individuals which will further improve controls over SVRS access.

Recommendation # 3

We recommend the Secretary of State's office assist counties in implementing effective desktop security procedures by:

- A. Developing Statewide Voter Registration System security procedures at the county level; AND
- B. Providing counties with desktop security advice and guidance through the Statewide Voter Registration System help desk; AND

C. Implementing an audit process to identify security weaknesses at the county level.

Implementation Status – Being Implemented

The SOS office has begun implementing new guidelines to assist counties in improving computer desktop security. The SOS office has strengthened its help desk security procedures to include a new audit process that will help identify security weaknesses at the county level. County elections officials we contacted as part of audit follow-up work expressed satisfaction with the services available via the SOS help desk function for SVRS. The SOS office had not formally adopted new desktop security procedures for SVRS users because updates to the State of Montana's desktop security procedure are currently pending. Once the State of Montana, Department of Administration Information Technology Services Division completes these updates, the SOS office anticipates revisions to the security procedures it provides to counties.

Recommendation # 4

We recommend the Secretary of State's office revise the current service level agreement with the Information Technology Services Division to include specific assignment of responsibilities and procedures relating to the Statewide Voter Registration System change control process and implementation of the back-up system.

Implementation Status – Implemented

The SOS office has completed revisions to the service level agreement with the State of Montana, Department of Administration Information Technology Services Division addressing this audit recommendation. Specifically, revisions to the service level agreement were made to clarify change management procedures and to establish responsibility for incident notification and the implementation of the back-up system. These actions fully implement audit recommendation # 4.

Recommendation # 5

We recommend the Secretary of State's office continue to review and revise training materials and other elections guidance to emphasize the availability of polling place elector ID forms and work with counties to ensure effective implementation.

Implementation Status – Implemented

The SOS office has provided training on the use of polling place elector ID forms for county election officials through the statewide election administrator workshop and at regional election official trainings. Instructions for the use of polling place elector ID forms are also included in the Election Judge Handbook. As part of our follow-up audit work, we interviewed the clerk and recorder in five Montana counties and all verified that training on the subject was provided. The SOS office indicates that polling place elector ID training efforts will be ongoing.

Recommendation # 6

We recommend the Secretary of State's office collaborate with counties to develop, produce and distribute a uniform voter information display for use in all Montana's polling places.

Implementation Status – Implemented

Uniform voter information posters have been developed and were distributed to counties to be displayed on Election Day. We reviewed samples of the displays as supplied by the SOS office and verified with five county clerk and recorders that displays were received and that the number of posters was adequate and met county needs.

Recommendation # 7

We recommend the Secretary of State's office lead efforts to mitigate the negative effects of late registration by:

- A. Focusing public education on registering prior to Election Day; AND
- B. Emphasizing late registration procedures and anti-fraud controls in training for county elections officials.

Implementation Status – Implemented

The SOS office reports that it provided a variety of public service announcements and media packets urging potential voters to register prior to Election Day. It also provided training to county election officials at the statewide election administrator workshop and at regional election official trainings. The five county clerk and recorders we interviewed stated that counties were generally better able to handle late registration, though some problems remain related to the lack of physical space to accommodate late registrants at county facilities and the need to hire additional temporary employees to handle the influx of people. Data reported for the 2008 General Election cycle showed that a greater proportion of late registrants chose to register prior to Election Day, rather than waiting until election day itself.

Recommendation # 8

We recommend the Secretary of State's office monitor ongoing trends in late registration to determine the impact on elections administration and, if needed, mitigate future impact by:

- A. Rolling back the late registration period to some point prior to Election Day; OR
- B. Providing additional resources or guidance to maintain current levels of effort in counties; OR
- C. Expanding late registration to a precinct-based procedure.

Implementation Status – Implemented

The SOS does not believe it is necessary to roll back late registration to some point prior to Election Day. Secretary of State Linda McCulloch provided testimony on House Bill 88 during the 2009 Legislative Session that the SOS office "is convinced that a date change could disenfranchise voters who may have an expectation that registering and voting can be done on Election Day." SOS staff members have monitored trends in late registration and have provided training and public education. In November 2008, the SOS office prepared an analysis of late registration trends, which states that it is too early to determine lasting trends in late registration. However, SOS staff members stated that it is their belief that late registration problems are diminishing and many remaining issues are related to a lack of physical space at county courthouses. Because the SOS office has provided guidance to counties and is monitoring the effects of late registration on county election officials, we consider this audit recommendation to be implemented.

Recommendation # 9

We recommend the Secretary of State's office leads efforts to transition Montana counties to a common standard for voting systems by:

- A. Prioritizing availability of remaining HAVA funds for upgrading county voting systems equipment; AND
- B. Establishing a common technological standard for voting systems as a strategic priority for the office; AND
- C. Determining the need for further legislative guidance relative to voting systems.

Implementation Status – Partially Implemented

Some HAVA grant money for equipment upgrade purchases remains and counties have been made aware it is available. According to the state's 2008 revised HAVA plan, the state plans to spend \$600,000 of

remaining HAVA funds to match half of county precinct counter hardware costs. There has been a slowdown in county purchases of precinct-level tabulators perhaps because the counties that were interested in that type of system have already purchased such hardware. Secretary of State staff members stated that 11 or 12 of the smaller counties appear unlikely to adopt new technology. County election administrators retain control over county voting systems and updating of voting systems depends on local policy and resources, so the establishment of a uniform technological standard may be difficult. For this reason, we consider audit recommendation #9 to be partially implemented.

Recommendation # 10

We recommend the Secretary of State's office revise voting system testing procedures to ensure all the different types of elections equipment used in the state are included in the office's random testing procedures.

Implementation Status – Implemented

Voting system testing procedures have been revised to ensure a minimum of 10 percent of all the different types of voting equipment are selected at random and tested each year. The SOS office maintains a list of county election equipment and has devised a methodology to select equipment for testing. The SOS office asks counties to verify that testing has been completed. All five county clerk and recorders we interviewed reported that testing of voting equipment was completed before and/or after the 2008 election, with two counties reporting that testing results were supplied to the SOS office.

Recommendation # 11

We recommend the Secretary of State's office work with counties to address inconsistencies in the administration of absentee voting by:

- A. Revising public education and training efforts to provide increased emphasis on the absentee voting process; AND
- B. Reviewing county absentee voting communications to determine where required voter information could be standardized further; AND
- C. Where necessary, seeking statutory revisions to clarify treatment of absentee ballots received in different circumstances.

Implementation Status – Implemented

The SOS office has provided training on administration of absentee voting for county election officials through the statewide election administrator workshop and at regional election official trainings. In October 2008 the SOS office issued a directive to county election administrators which stressed the importance of handling absentee ballots uniformly. Instructions for handling of absentee ballots are also included in the Election Judge Handbook. Data reported for the 2008 General Election shows that the return rate for absentee ballots improved over the 2006 election cycle; in 2006, voters returned 92.7 percent of absentee ballots, as compared with a return rate of 95.5 percent in 2008. Between 2006 and 2008 there was also a slight increase in the count rate for returned absentee ballots (the proportion of ballots that were correctly counted and voted).

Recommendation # 12

We recommend the Secretary of State's office continue addressing polling place accessibility issues by:

- A. Working to identify unmet needs and prioritize allocation of remaining funding based on these needs; AND
- B. Establishing long-term goals for reducing the number of remaining inaccessible polling places through upgrade or replacement.

Implementation Status – Being Implemented

The SOS office has continued to work with Disability Rights Montana to assess accessibility of polling places and review grant applications for accessibility improvements. County clerk and recorders stated that grants from these HAVA funds have improved accessibility at many locations. The SOS office reports that HAVA funds have been used to improve 247 separate polling locations. Disability Rights Montana and the SOS office have identified 143 polling places for priority improvement. Accessibility activity was generally slow during 2008. Many counties are beginning to investigate polling place consolidation—this trend may require changing the location of traditional polling places and therefore impact the numbers that are accessible. Pending further developments in polling place consolidation, the SOS office is continuing to work towards the goal of recommending to county government officials the need to address remaining accessibility issues by the 2010 election cycle.

Recommendation # 13

We recommend the Secretary of State's office update the Election Judges Handbook to include specific written instructions on installation and operation of Automark voting systems during polling.

Implementation Status – Implemented

The Election Judge Handbook has been updated and now includes a section addressing the installation and operation of Automark machines.

Recommendation # 14

We recommend the Secretary of State's office take steps to address the future of elections by:

- A. Updating the state HAVA plan to include any necessary changes in the allocation and distribution of remaining HAVA funding; AND
- B. Identifying whether counties can meet the ongoing implementation costs of elections reform efforts following depletion of HAVA grant funding; AND
- C. Where necessary, seeking legislative changes to accurately reflect division of responsibility for elections funding and provide a viable basis for long term implementation of HAVA and other elections reforms.

Implementation Status – Partially Implemented

The SOS office revised the state HAVA plan in 2008 to include necessary changes in the allocation and distribution of remaining HAVA funds. The SOS office has also continued to work with county election officials on issues relating to HAVA implementation costs and the sustainability of election reform efforts following depletion of HAVA funds. Part of these efforts involved the SOS office working with the Montana Association of Counties to address the division of responsibility for elections funding between federal, state and local governments. The Montana Association of Counties passed a resolution during its September 2008 annual conference supporting a cooperative effort with the SOS office to pursue additional funding for elections administration. Thus far, these efforts have not resulted in legislative changes addressing long-term funding needs relating to HAVA and other elections reforms. Currently, payment of annual expenses in the amount of approximately \$750,000 for the statewide voter registration system continues to come from remaining HAVA funds the Secretary of State administers. Further developments relating to elections funding may occur following a scheduled federal audit of Montana's HAVA expenditures, which the SOS office has requested take place this year. Federal HAVA audits conducted by the U.S. Election Assistance Commission can include an assessment of maintenance of state expenditures, which may address issues relating to the long-term financial sustainability of HAVA and other elections reforms.