

HAVA State Plan for South Dakota
As required by Public Law 107-252 Section 253(b)
Help America Vote Act of 2002

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In October of 2002, the 107th Congress passed and President George W. Bush signed into law the Help America Vote Act of 2002. HAVA was designed to strengthen the integrity of elections in America. HAVA created many new requirements of states and counties regarding federal elections -- including mandates for voter registration, provisional voting, accessible voting, and voter education. HAVA also created a new federal agency, the Election Assistance Commission (EAC), to guide the management of federal elections and administer grants to states for fulfilling the requirements of HAVA's title III.

HAVA requires each state to describe its use of title II section 251 payments from the federal government by writing a "State plan." A 17-member HAVA task force developed South Dakota's first state plan in the spring of 2003. The state plan was updated in December of 2004 as HAVA projects matured. Federal elections in 2006 demonstrated the completion of all phases of the state plan.

In March of 2007 the Secretary of State certified to the EAC that South Dakota had fulfilled all of title III's requirements. The State also notified the EAC that it intended to expand its use of title II section 251 funds for other improvements to the administration of federal elections as allowed by HAVA §251(b)(2). The EAC notified the State that it must also revise its state plan to describe such use. The state plan was therefore revised in 2007 in a third version.

The Omnibus Appropriations Act of 2008 provided \$575,000 for the State of South Dakota in keeping with the requirements of the original HAVA section 251 payment made to South Dakota in 2005. South Dakota's HAVA state plan is here revised in a fourth version to reflect the State's plan to use the \$575,000 payment.

The 13 required points of HAVA §254(a):

(1) How the State will use the requirements payment to meet the requirements of title III, and, if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections.

(1.1) Programs to educate, provide required information, eliminate overvotes, and provide replacement ballots

Two posters in 48-point font posted in each polling place and instructions posted in each voting booth inform voters when to vote, how to vote, how not to overvote, how to obtain a replacement ballot, how to obtain assistance, the right to a provisional ballot, how to contact an election official if rights are violated, and how to avoid election crimes. Facsimile ballots are available in county auditor offices prior to elections, posted at each polling place, and published in newspapers. Instructions are printed on all official ballots. AutoMARK ballot marking devices do not mark overvotes. In 2006 the State published full-page newspaper advertisements describing the AutoMARK. The State educates voters through its website at www.sdsos.gov and provides booklets entitled “General Information on South Dakota Elections.” In 2004, the Secretary of State prepared a booklet describing election procedure changes, which was also provided in accessible formats including 18-point font, Braille, and audio. The Secretary of State prepares a ballot question pamphlet, also made available in alternate formats. In 2008, the State provided a voter information portal (VIP) through its website tied to the statewide voter database. VIP includes a polling place locator and sample ballot generated specific to each registered voter.

(1.2) Accessible voting device in each polling place

South Dakota counties currently provide the AutoMARK ballot assistant in every polling place for any federal election. The AutoMARK is available for any voter. It assists a broad range of voters in accessing and marking ballots independently and privately. Counties may select other accessible voting devices approved by the State Board of Elections.

(1.3) Provisional voting

South Dakota Senate Bill 13 became law on July 1, 2003, providing for provisional voting. The processing and counting of provisional ballots is described in SDCL 12-20-5.1 and 12-20-13.1 through 13.4.

(1.4) Computerized statewide voter registration list

Beginning in January of 2004, the State has maintained an electronic statewide voter database of every registered voter updated daily. The statewide file links to the state Unified Judicial System for updates on convicted felons and links to the state Department of Health for updates on deceased persons. Each new voter registration is verified by driver license number or last four digits of social security number. Although the statewide file incorporates many processes to remove duplicate or ineligible registrations, the statewide file relies on local county knowledge for verification. The State continues to seek methods to improve the reliability of the list, including cooperative cross checks with other states.

(1.5) Voter registration cards

The South Dakota voter registration form, prescribed in administrative rule as adopted by the State Board of Elections, has been amended to include the HAVA-required language and check boxes, including: “Are you a citizen of the United States? Will you be 18 years of age on or before Election Day? If you checked ‘no’ in response to either of these questions, do not complete this form.”

(1.6) Other activities to improve the administration of federal elections

The State has developed a computerized link between driver license offices and county auditor offices to transmit voter registration data. A voter is able to obtain a driver license and register to vote using one form. An electronic voter registration card is generated complete with digital signature image and sent to the county for validation and then sent to the State.

The State is currently developing project ST25, which will make improvements to election night reporting, canvassing, and voter education and access.

The State may use title II section 251 funds for additional projects to improve federal elections as determined by the Secretary of State. Counties may use title II funds for specific projects to improve federal elections with the approval of the Secretary of State.

(2) How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of—

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

County auditors administer federal elections in South Dakota counties. In order to receive the original title II section 251 grant in 2005, South Dakota was required to contribute 5% toward a total amount including the federal grant of \$11,596,803. The State and counties cooperatively met the match requirement. The state legislature appropriated \$198,405.80, which was spent on the statewide electronic voter file. Each county established a reserved account determined by the county’s portion of all statewide registered voters. The match contributions from the 66 counties totaled \$411,952.20. The amount of federal grant funds reserved by the State for the counties was based on the portion of the total 5% match that the counties contributed. This total was reduced by the cost of the HAVA-required voting system, purchased from Election Systems and Software in December of 2005. The remaining title II

amount of \$3,235,652.80 was reserved in the state election fund, designated to each county based on its match contribution. The Secretary of State monitors and tracks county expenditures of title II funds for ongoing title III-acceptable expenses via reports sent to the State. Additional documentation is systematically requested to ensure the acceptability of funds use. Counties are required to expend county-held accounts on title III requirements before requesting state-held funds. Counties are reimbursed semi-annually from the state election fund. Any title II amount in the state election fund not reserved, may be used for title III requirements or for improving the administration of federal elections. The state may determine to increase the amount of the election fund reserved for individual counties.

On January 1, 2008, the State credited \$4,000 from the state election fund to each county's state-held balance, a total of \$264,000. Such funds remain in the state election fund, in the state treasury, but are now reserved for county use in keeping with the existing model that requires counties to report to the state for funds use.

Given the State's experience with monitoring the costs to counties to provide title III requirements in federal elections in 2006, the State has observed that some expenses are consistent for each county, regardless of each county's number of registered voters. Based on that fact and a review of each county's current reserved state-held title II fund balance, the State has determined that the most appropriate method of distributing the \$575,000 grant is to provide each of South Dakota's 66 counties with an equal share of such grant. Each county will be required to reserve in a county-held account, \$458.53, the sixty-sixth part of the total match requirement of \$30,263. The state will credit each county's state-held balance with \$8,712.12. Once the \$575,000 is received by the State, each county will be required to expend its \$458.53 on title III requirements and report that to the State before accessing its state-held county-reserved funds.

If further title II section 251 funds are made available to the State, the Secretary of State will determine an appropriate method for funds distribution.

(3) How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of title III.

In addition to the ongoing programs described above in (1.1), the State made special efforts to educate the public on the new voting system used for the first time in 2006. The State and counties demonstrated the AutoMARK to voters throughout the State through a variety of venues. Additional efforts may be made in future years. County auditors are trained by the State on HAVA procedures at election workshops and conventions and through publications and e-mails. Advocates for persons with disabilities assist the State in training. Special regional trainings were given in 2006 for the new voting system. County auditors in turn train precinct officials at county election schools. In 2006, the Secretary of State also gave special trainings to precinct workers at regional sessions explaining the new voting system and proper

procedures for meeting the needs of voters with disabilities. Similar trainings may be given in future years.

(4) How the State will adopt voting system guidelines and processes which are consistent with the requirements of section 301.

The HAVA task force guided the State on the voting system that would be selected. South Dakota laws and administrative rules have been passed to provide for all section 301 requirements. The Secretary of State and county auditors manage the processes needed to comply with section 301.

(5) How the State will establish a fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management.

An election fund has been established in the South Dakota state treasury containing title II section 251 funds. Expenditures are made as needed by the Secretary of State with oversight by the State Auditor through spending authority granted by the State Legislature. Interest is earned and credited to the fund annually. All expenditures from the fund are subject to state government accounting and audit procedures.

(6) The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—

(A) the costs of the activities required to be carried out to meet the requirements of title III;

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) the portion of the requirements payment which will be used to carry out other activities.

In previous HAVA state plans the State described a budget for projected amounts to fund title III-required programs. All programs were fulfilled within that budget and significant funds remain available to the State and its counties for ongoing HAVA expenses, future voting system purchases, and other improvements to the administration of federal elections.

South Dakota received a title II section 251 payment in April of 2005 in the amount of \$11,596,803. Through June 30, 2007:

\$6,499,467.23 were total state-held title II funds remaining available, of which \$2,877,600.00 were state-held, county-reserved title II funds remaining available.

As of June 30, 2007, counties reported that \$33,791.36 remained in reserved county-held match money accounts.

The State expects that costs to the State to continue HAVA programs will likely be reduced for some time. As current programs mature and become a part of the regular

fabric of federal elections, time and effort to the HAVA task should diminish. In the near future, a dedicated state HAVA coordinator may no longer be needed. In the case of the electronic voter file, initial development costs were substantial. Annual costs have been reduced. However, costs will continue and may increase for maintenance, technical support, network connections, and specific design updates. At some future time, the State may need to develop a new computerized voter registration database system. When that might be and what that might cost are imprudent to predict. Potential amendments to HAVA of 2002 may also increase the cost of state compliance with enlarged federal requirements.

The State expects that costs to counties will continue and increase at least at the rate of inflation to prepare and implement individual federal elections within the framework of the current voting system. When new voting systems are required, counties will face significant additional costs in acquiring the new equipment. The State and counties will work to maintain the current voting system for as long as practicable.

Since the State has fulfilled HAVA's requirements and will continue to do so, the State wishes not to restrict itself unnecessarily through this state plan. New programs to improve the administration of federal elections may develop that have not yet been contemplated. The State determines not to narrowly predict what those might be in hopes that this state plan may stand indefinitely without further revision. The State will continue to submit annual financial status and narrative reports to the EAC concerning HAVA grants as required.

With continued conservative management of the HAVA grant funds and the benefit of accumulating interest, the State may be able to indefinitely continue to meet HAVA obligations and continue to improve the administration of federal elections in South Dakota without needing further state resources or additional federal grants.

The estimate for the development of ST25 is \$200,000; support costs will continue. For ST25, South Dakota may use either title I section 101 or title II section 251 funds. South Dakota may effect additional programs as determined useful by the State.

(7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

In previous HAVA state plans, the State described the expense to the State for the State Election Supervisor. However, in 2007 the EAC advised that maintenance of effort applies specifically to prior expenses that became title III requirements. HAVA's maintenance of effort requirement is designed to ensure that federal grant funds do not replace already occurring state or county expenses. With this new understanding, the State clarifies that it had no such spending prior to HAVA and, therefore, has no level of spending to maintain.

Some counties, however, did have expenses consistent with title III requirements prior to HAVA. The EAC has allowed that South Dakota counties will be responsible for maintenance of effort according to the county fiscal year 1999. Counties have been advised to determine if there existed any spending for title III-type activities in 1999. If any existed in the county, the county will be responsible for maintaining that level every year according to the first year that the county used any federal or county funds dedicated to HAVA title III requirements.

(8) How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

South Dakota has fulfilled the goals described in earlier state plans – including reducing the percentage of overvotes, educating voters on how to avoid and correct ballot errors, providing at least one §301(a)(3)(B) voting device in every polling place for any federal election, providing provisional voting, posting required notices at polling places as described above in (1.1), removing every person convicted of a felony and sentenced to the adult state penitentiary system from the statewide voter registration list, verifying every new voter registration against either the person's driver license or last four digits of social security number, providing voter registration cards as described above in (1.5), and providing quicker, easier one-form voter registration and updating at driver licensing stations as described above in (1.6).

The Secretary of State and county auditors will continue to monitor these processes. South Dakota is in compliance with federal election law and will continue to meet HAVA requirements.

(9) A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.

South Dakota law was written, effective July 1, 2003, to comply with HAVA section 402. Initial complaints are resolved by the State Board of Elections using an existing administrative complaint process. The alternative dispute process involves judicial appointment of an arbitrator to resolve the complaint.

(10) If the State received any payment under title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

South Dakota received a title I section 101 payment in the amount of \$5,000,000 in April of 2003. Title I funds have been used for payments to counties for punchcard voting system buyouts; voter education; statewide voter registration system programming, hardware, and connection costs; training and materials for election

personnel; travel for election personnel; salary and expenses for a dedicated state HAVA coordinator; and state plan development. The State may continue to use title I funds on these programs and for other programs permitted by HAVA §101(b).

Through June 30, 2007:

Total title I section 101 funds remaining available were \$4,652,191.59.

(11) How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change—

(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;

(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and

(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

The Secretary of State and county auditors will administer this state plan at the direction of the Secretary of State and the State Board of Elections.

(12) In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

The methods by which the State fulfilled its previous state plans have already been described in this plan. The State anticipates no major changes to its implementation of HAVA, except that title II section 251 funds may now be used for additional improvements to the administration of federal elections.

The State has also determined that providing voters with the option of an audio interpretation in the Lakota language integrated on the device equipped for individuals with disabilities provided pursuant to HAVA §301(a)(3)(B), an element of South Dakota's voting system, as was done on the AutoMARK ballot marking devices in 11 counties for the Primary and General elections in 2006, is impractical given the amount of effort necessary, the cost to the State and counties, and the extremely limited number of users. The State expects to continue to provide a Lakota translation of the ballot question pamphlet for the General Election to the American Indian radio stations. South Dakota counties required to do so by federal law will continue to provide translations of election announcements on Indian radio stations and continue to provide live interpreters at polling places to assist American Indian voters.

(13) A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

The state plans of 2003 and 2004 were developed with guidance from a HAVA task force comprised of advocates for persons with disabilities and voter participation, representatives of the recognized political parties, state legislators, county auditors including the county auditors of South Dakota's two most populous counties, the State Board of Elections, the State Election Director, and the Secretary of State.

Task force members and other stake holders were notified of the 2008 proposed plan and were offered the opportunity to comment. The proposed plan was available for inspection and comment by the public for 30 days. The plan was posted at www.sdsos.gov and was available by request. The State notified the public of the opportunity to also comment on the proposed plan at an open hearing, which was the meeting of the State Board of Elections held via Dakota Digital Network on July 17, 2008, where the plan and submitted comments were presented and discussed. The State has considered all comments. The State Board of Election has approved this state plan. This plan is now being sent to the Election Assistance Commission for publication in the Federal Register.