Amended Texas State Plan
Pursuant to the Help America Vote Act of 2002
(HAVA)
January, 2005

Geoffrey S. Connor
Secretary of State
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www.sos.state.tx.us
(800) 252-VOTE(8683)
1. How the requirements payments (i.e., Title II funds) will be used to meet the mandates in Title III (new federal requirements)

Brief Overview of State Elections Structure

The Secretary of State (“SOS”) is the chief election officer of the state and is required to maintain uniformity in elections held in the state and to advise and assist local officials who actually conduct elections. The Secretary of State also has authority to adopt administrative rules to gain uniformity in interpretation of state election laws and procedures.

The conduct of elections in Texas is decentralized. The statutory requirements for elections are set out in the Texas Election Code. The county clerk or county election administrator, in those counties that have created the office, is generally the official charged with conducting county elections. County voter registrars maintain the official list of registered voters; the voter registrar is generally either the county tax assessor-collector, or again the election administrator. The county political parties conduct primary elections in Texas, with the county chair as the chief elections official. Early voting in the primary is conducted by the county elections official.

Other elections are conducted by the political subdivision. City elections are held by the city, school district elections by the school, and so on. These political subdivisions often contract with the county to conduct their election or hold joint elections with one another, but they are not required to do so. They utilize the county list of registered voters appropriate for their locality.

The Secretary of State maintains an unofficial state list of registered voters. The Secretary of State’s office houses and maintains a state master file of all registered voters. The Secretary of State also maintains the Texas Voter Registration Online System (“TVRS”), which is a voluntary online voter registration system currently used by 164 of 254 counties. For those counties utilizing the TVRS system, the state database reflects their “official” voter file. The master file has approximately 12.1 million active voters and also stores approximately 2.5 million cancelled voters at any given time. The state master file maintains two separate tables defined for either “offline” or “online” counties. An offline county updates the masterfile through a web browser application, on a weekly basis in a pre-specified standard record layout. TVRS counties update in real time with all transactions validated and updated per session. At present, voter registration systems are reviewed by the Secretary of State’s office to ensure that they are capable of submitting reports in a standard format as required by the state.

Texas is a state covered under Section 5 of the federal Voting Rights Act, which requires changes in election processes to be submitted to the Voting Section of the U.S. Department of Justice (“DOJ”) for review prior to enforcing the change. At the state level, the Secretary of State submits changes in state election procedures. At the local level, each county must submit its changes to DOJ. These include polling place changes, change in the method of election, and adoption of new voting systems, among others.
According to the 2000 decennial census, the voting age population of Texas was 14,965,061. The state had 12,365,235 registered voters for the 2000 general election. In the 2002 November general election, the number of registered voters was 12,563,459.

Turnout in the 2000 November general election for state and county officers was 6,407,637, which constituted 51.8% of the registered voters and 42.8% of the voting age population. Turnout in the 2002 general election for state and county officers was 4,553,979, which constituted 36.2% of registered voters and 30.4% of the voting age population, using the 2000 census numbers.

In November 2000, the breakdown of election systems used by counties was:

- Paper Ballot: 90
- Optical Scan: 150
- Punch Card: 14
- Lever Machine: 3
- DRE: 4

Attached as Table 2 (page 22) is a list of the county by county breakdown of voting systems. The Secretary of State is the authority charged with certifying voting systems for use in the state.

How the state will meet the Title III requirements is described in Table 1 below. The charts have been updated to reflect the current status and action planned as of January 2005.

**Table 1**

<table>
<thead>
<tr>
<th>Voting System Standards</th>
<th>Sec. 301</th>
<th>State of Texas Current Status</th>
<th>Action Planned</th>
</tr>
</thead>
<tbody>
<tr>
<td>All voting systems shall permit a voter to verify/review selections before casting the vote.</td>
<td>Meets the requirement. Texas Election Code (TEC) Sections 64.007 and 129.001(b).</td>
<td>No action needed.</td>
<td></td>
</tr>
<tr>
<td>Allow voter to change or correct any error on the ballot before casting the vote.</td>
<td>Meets the requirement. TEC Section 64.007.</td>
<td>No action needed.</td>
<td></td>
</tr>
<tr>
<td>Prevent or alert voter if he/she overvotes on the ballot.</td>
<td>Partially meets the requirement. DRE systems and precinct count optical scan systems alert the voter of an overvote. Manually counted paper ballots, centrally counted optical scan ballots, and punch card ballots do not alert the voter of overvotes. Current process on mail-in paper absentee ballots would not meet the requirement.</td>
<td>A voter education campaign will be implemented in all centrally counted optical scan and paper ballot precincts no later than January 1, 2006, to educate voters on the effect of an overvote on these systems.</td>
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</tr>
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<td>Voting System Standards</td>
<td>Sec. 301</td>
<td>State of Texas Current Status</td>
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<td>------------------------------------------------------------------------------</td>
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<tr>
<td><strong>HAVA Requirement</strong></td>
<td><strong>Sec. 301</strong></td>
<td><strong>State of Texas Current Status</strong></td>
<td><strong>Action Planned</strong></td>
</tr>
<tr>
<td>All voting systems must be able to produce a paper audit trail of all votes cast.</td>
<td>Sec. 301</td>
<td>Meets the requirement; state law currently requires real time audit of all election activity. TEC Section 122.001(a)</td>
<td>No action needed.</td>
</tr>
<tr>
<td>Voting systems must be accessible for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for privacy and independence as other voters.</td>
<td>Sec. 301</td>
<td>Partially meets the requirement. 13 counties have adopted an accessible DRE voting system. Most counties do not meet this requirement.</td>
<td>Upgrade existing voting systems or purchase new systems. All polling places will be required to be equipped with at least one DRE no later than January 1, 2006 pursuant to House Bill 1549.</td>
</tr>
<tr>
<td>Voting systems shall provide alternative language accessibility pursuant to the requirements of Section 203 of the Voting Rights Act of 1965.</td>
<td>Sec. 301</td>
<td>All certified voting systems meet this requirement for Spanish language, and one voting system has been certified for the Vietnamese language.</td>
<td>No action needed.</td>
</tr>
</tbody>
</table>
| All voting systems shall have error rates (machine errors only) that do not exceed the Federal Election Commission standards. | Sec. 301            | Meets the requirement.  
This requirement was added to state law in HB 1549. | No action needed.                                                            |
| A uniform definition of what constitutes a vote for each voting system in use in the state. | Sec. 301            | Meets this requirement.  
State law was passed to provide a uniform definition for what constitutes a vote. House Bill 1549 (2003) | No further action required.                                                   |

<table>
<thead>
<tr>
<th>Provisional Voting and Voting Information Requirements</th>
<th>Sec. 302</th>
<th>State of Texas Current Status</th>
<th>Action Planned</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>HAVA Requirement</strong></td>
<td><strong>Sec. 302</strong></td>
<td><strong>State of Texas Current Status</strong></td>
<td><strong>Action Planned</strong></td>
</tr>
<tr>
<td>A provisional voter is to be allowed to vote a paper ballot or an electronic ballot upon the completion of an affidavit. The ballot will be sealed in an envelope or electronically stored separately from the regular votes. The provisional ballot is to be transported to the appropriate election officials for determination of eligibility and counted if voter</td>
<td>Sec. 302</td>
<td>State law was amended to provide procedures to meet this requirement effective January 1, 2004 pursuant to House Bill 1549. The Secretary of State has adopted administrative rules to provide specific procedures and has adopted forms to assist in the implementation of this new process.</td>
<td>No further action needed.</td>
</tr>
</tbody>
</table>
### Provisional Voting and Voting Information Requirements

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<thead>
<tr>
<th>HAVA Requirement</th>
<th>State of Texas Current Status</th>
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</thead>
<tbody>
<tr>
<td>is deemed eligible.</td>
<td></td>
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</tr>
<tr>
<td>Each voter who casts a provisional vote shall be given written information on</td>
<td>State has developed administrative rules and has adopted forms to implement this requirement.</td>
<td>No further action needed.</td>
</tr>
<tr>
<td>how he or she can ascertain whether his or her vote was counted, and if not why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Establish a free access system, such as toll-free phone number or Internet</td>
<td>State rules require the provisional voter to be notified via mail whether the voter’s ballot</td>
<td>No further action needed.</td>
</tr>
<tr>
<td>website, allowing provisional voters to ascertain whether their vote was</td>
<td>was counted, and if the ballot was not counted, the reason why it was not counted.</td>
<td></td>
</tr>
<tr>
<td>counted, and if not why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Post in each polling place a sample version of the ballot that will be used on</td>
<td>State law passed to make it mandatory to post a sample ballot at each polling location.</td>
<td>No further action needed.</td>
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<tr>
<td>election day.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Post information regarding the day of the election and polling hours.</td>
<td>State law passed to require this posting.</td>
<td>No further action needed.</td>
</tr>
<tr>
<td>Post general information on state and federal voting rights and the right to</td>
<td>State has prescribed language on the voter information poster required to be posted at each</td>
<td>No further action needed.</td>
</tr>
<tr>
<td>a provisional vote if the requirements to vote are met.</td>
<td>polling place beginning January 1, 2004.</td>
<td></td>
</tr>
<tr>
<td>Post general information on federal and state laws prohibiting acts of fraud</td>
<td>State has prescribed language on the voter information poster required to be posted at each</td>
<td>No further action needed.</td>
</tr>
<tr>
<td>Any voter who cast a vote as the result of a federal or state court order</td>
<td>State law amended to provide for this occurrence and law became effective January 1, 2004.</td>
<td>No further action needed.</td>
</tr>
<tr>
<td>extending polling hours, shall do so on a provisional ballot, and it shall be</td>
<td>Precinct election forms were designed to accommodate this occurrence.</td>
<td></td>
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<tr>
<td>kept separate from other provisional ballots.</td>
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</tbody>
</table>

### Computerized Statewide Voter Registration System

<table>
<thead>
<tr>
<th>HAVA Requirement</th>
<th>State of Texas Current Status</th>
<th>Action Planned</th>
</tr>
</thead>
<tbody>
<tr>
<td>State shall implement a uniform, official, centralized, interactive</td>
<td>Does not meet the requirement.</td>
<td></td>
</tr>
<tr>
<td>computerized statewide voter registration list.</td>
<td>Currently, 164 counties use the Secretary of State voter registration program to register and</td>
<td></td>
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<tr>
<td></td>
<td>maintain their lists of voters. The data is held at the Secretary of State’s Office.</td>
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<tr>
<td></td>
<td>State law was amended to require a statewide official list maintained at the Secretary of</td>
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<tr>
<td></td>
<td>State’s office.</td>
<td></td>
</tr>
<tr>
<td>Computerized Statewide Voter Registration System</td>
<td>Sec. 303</td>
<td>Action Planned</td>
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</tr>
<tr>
<td><strong>HAVA Requirement</strong></td>
<td><strong>State of Texas Current Status</strong></td>
<td><strong>Action Planned</strong></td>
</tr>
<tr>
<td>State law requires the state to maintain a copy of the list of registered voters, and counties have to update to the state database once a week. The state database is not considered the official list of voters.</td>
<td></td>
<td>completed the procurement process and signed a contract for the development of a complaint statewide system on November 8, 2004. Development of the system is underway.</td>
</tr>
<tr>
<td><strong>Perform list maintenance to ensure only qualified voters appear on the list, including felons and deaths of registrants.</strong></td>
<td>State meets this requirement. State receives information from other state agencies regarding deaths and felons and provides this information to county voter registrars on a weekly basis.</td>
<td>No action needed.</td>
</tr>
<tr>
<td>Ensure that only voters who are not registered or who are not eligible are removed from the computerized list.</td>
<td>State meets this requirement. State law prescribes narrow guidelines regarding canceling a voter’s registration. Only with a positive name and identification number match can a voter be canceled. The local county voter registrar, not the state, cancels voters. Voter registrars may not cancel based on information provided by a vendor unless that information is verified by the voter registrar by a public record. TEC, Chapter 16 and Section 18.0121.</td>
<td>No action needed.</td>
</tr>
<tr>
<td><strong>Ensure that voter registration records are accurate and updated regularly.</strong></td>
<td>Does not meet the requirement.</td>
<td>State law was amended to require a statewide official list maintained at the Secretary of State’s office. The state completed the procurement process and signed a contract for the development of a complaint statewide system on November 8, 2004. Development of the system is underway.</td>
</tr>
<tr>
<td>State to verify applicant’s driver’s license or social security number prior to approval of applicant.</td>
<td>Does not meet the requirement.</td>
<td>State law was amended to require a statewide official list maintained at the Secretary of State’s office. The state completed the procurement process and signed a contract for the development of a complaint statewide system on November 8, 2004. Development of the system is underway.</td>
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<tr>
<td>HAVA Requirement</td>
<td>State of Texas Current Status</td>
<td>The state completed the procurement process and signed a contract for the development of a complaint statewide system on November 8, 2004. Development of the system is underway.</td>
</tr>
<tr>
<td>State to assign unique identifier if applicant does not have driver’s license or social security number.</td>
<td>Does not meet this requirement.</td>
<td>State law was amended to require a statewide official list maintained at the Secretary of State’s office. The state completed the procurement process and signed a contract for the development of a complaint statewide system on November 8, 2004. Development of the system is underway.</td>
</tr>
<tr>
<td>Require appropriate identification for first time voters if a computerized list has not been implemented.</td>
<td>State law was amended to require identification at time of registration for first time voters registering to vote by mail effective January 1, 2004.</td>
<td>No further action required.</td>
</tr>
<tr>
<td>Voter registration application is required to have additional information printed on it.</td>
<td>State has prescribed new form, and has distributed to all counties.</td>
<td>No further action required.</td>
</tr>
</tbody>
</table>

2. How Title II requirement payments will be monitored and distributed for the purpose of meeting the mandates in Title III, including determining the eligibility for receipt of payments and our methods for monitoring the performance of the local entities’ continued eligibility.

The SOS has developed an online grant application and management system. This system is essential for the SOS to establish an infrastructure and the necessary controls to effectively manage the HAVA funds and to accurately report the necessary programmatic and financial information to the federal government. Figure 1 (page 15) outlines the currently approved
requirements payments budget for the 2003 fiscal year appropriation and the proposed budget for the 2004 fiscal year appropriation. The following is a description of how the funding has and will be distributed to funding recipients as well as a description of the funding allotments to each county.

Grant Award Process

In September 2004, an award agreement was sent to each Texas county judge. As the chief executive officer of the county, the judge is required to sign the award agreement. To secure the funding, there are three basic steps:

1. The award agreement must be signed and returned to the Office of the Secretary of State.
2. A resolution from the county’s governing body (i.e., county commissioners court) must be submitted as well. Required language for the resolution is included in the award agreement.
3. The online forms located on the Texas HAVA online grant system must be satisfactorily completed. The forms require information such as the official county address as well as the county’s Employer Identification Number, State Vendor ID (VIN), and 3-digit Mail Code. The State Vendor ID is assigned by the State Comptrollers Office when an entity receives funds from the state and is comprised of the federal ID number plus a few other digits. The mail code determines which account the funds will be direct deposited into or whether a state warrant will be mailed. The county financial officer (i.e., county auditor or treasurer) will have this information. The county is also required to enter a detailed budget for each funding allocation. Guidelines regarding eligible uses for each funding allocation are included in the award agreement as well as the online forms. Grant activities must also be entered into the grant system where applicable.

DEADLINE TO APPLY FOR FUNDING - The FY 2003 funds will be available through August 31, 2006. Because not all counties will develop their funding priorities at the same rate, there are no deadlines currently imposed by the SOS for the counties to complete the online forms. However, all counties are encouraged to submit the signed grant award agreement that was sent to the county judge along with the required resolution from the commissioners court as soon as possible. The SOS may impose deadlines if an excessive amount of time elapses and the county has taken no action to secure the funding.

RESOLUTION - In addition to the parties that typically sign a resolution for the county (e.g., the county judge and the commissioners), the county election official(s) and the county financial officer must also sign the resolution.

GRANT AWARD APPROVAL AND REQUESTING REIMBURSEMENT - After the SOS has received the signed agreement that was sent to the county judge, the required resolution from the commissioners court as outlined in the award agreement, and the online forms have been submitted via this system, the SOS will review the documents and online forms for accuracy and completeness. Upon SOS approval, an email notification will be sent to the county judge, the election official(s), and the financial officer (Note: an email notification will only be sent if the
user provides one when entering his or her contact information). At that time, the county financial officer will have access to submit reimbursement requests via the grant system.

**Funding Allocations - Fiscal Year 2003 Appropriation**

**Accessible Voting System in Each Polling Place**

These funds are to be used for reimbursement of county costs incurred as a result of obtaining a HAVA-compliant accessible voting system in each polling location. This requirement may be met by having at least one accessible direct recording electronic voting system (“DRE”) or other system equipped for individuals with disabilities at each polling site. The reimbursable amount each county is eligible for is calculated based on the number of precincts (polling places) used during the 2000 federal election multiplied by $3,000.

**General HAVA Compliance**

These funds may be used by the county for voter education, election worker education, upgrading voting systems to comply with new federal standards – including compatibility with the new statewide voter registration system, and acquiring an accessible voting system in each polling place. Priority will be given to acquiring an accessible voting system is each polling place because of the January 1, 2006 compliance mandate.

The reimbursable amount each county is eligible for is calculated based on the county’s voting age population during the 2000 federal election as a percentage of the state’s total voting age population and the total budgeted amount for general HAVA compliance. However, each county that would receive less than $5,000 based on the formula will receive $5,000.

**Funding Allocations - Fiscal Year 2004 Appropriation**

Because the FY 2003 allotment of funding will not cover all of the county costs to purchase an accessible voting system in each polling location, Texas has proposed to increase the Requirements Payments to the counties by 200 percent. By fully funding the costs associated with acquiring at least one accessible voting system for each polling location, counties will be less likely to object to the HAVA mandate. Additionally, the counties may seize the opportunity afforded by the available federal dollars to fully update their outdated voting systems, rather than simply purchasing the HAVA-required minimum of one accessible system per polling location. The SOS will likely amend the current award agreement between the state and the counties or draft a new agreement to accommodate the additional funding.

**Grant Regulations and Grant Oversight**

The Secretary of State will develop a monitoring plan in 2005. The monitoring function may be outsourced or may be handled internally or a combination of the two may be employed. This grant program falls under the general requirements of the Uniform Grant Management Standards (“UGMS”) prescribed by the Texas Office of the Governor. UGMS prescribes a standard set of...
financial management procedures and definitions and ensures accountability for expenditure of public funds. UGMS also incorporates the following federal regulations:

- OMB Circular A-87
- OMB Circular A-102
- “Common Rule”, Administrative Requirements, 53 FR 8087, March 11, 1988
- OMB Circular A-133

Per the terms and conditions of the award agreement, any funding received by the county, regardless of the purpose, is contingent on each polling place within the county must have a voting system that is SOS-certified as accessible for individuals with disabilities, including non-visual accessibility for the blind and visually-impaired, in a manner that provides the same opportunity for privacy and independence as other voters no later than January 1, 2006.


a. Voter Education Plan Goal

The state will develop a comprehensive voter education plan to educate voters on certified voting systems and the proper use of those voting systems, with special emphasis on accessibility issues as it relates to the use of voting systems. Components of the education plan will include the statewide voter registration system, and how to vote a provisional ballot. The state has a responsibility to ensure that the voting process and our systems of voting are accurate, secure, and accountable. Our voter outreach efforts will need to be designed to reflect and incorporate the diverse populations of Texas through a well-executed, adaptable program, delivered in an easy-to-use format, and in alternative formats for individuals with disabilities. The mediums for delivery of this voter education program will need to be equally diverse.

b. Educating the Voter

- The state surveyed the 254 counties, compiled a list of best practices, and developed resources to supplement existing training materials for the voter. The Secretary of State will release an RFP in 2005 for the HAVA Education piece that will be consistent with applicable state and federal laws and regulations, including the Texas Government Code and the Texas Building and Procurement Commission. HAVA funding will be used for education as it relates to Title III of HAVA, which includes educating the voter on: 1) How to verify/review selections before casting the vote. 2) How to change or correct any error on the ballot before casting the vote. 3) How to avoid over voting. 4) How individuals with disabilities, including non-visual accessibility for the blind and visually impaired, can access the voting system in a matter that provides the same opportunity for privacy and independence as other voters. 5) How the county’s voting system provides alternative language accessibility pursuant to the requirements of Section 203 of the Voting Rights Act of 1965. 6) What constitutes the uniform definition of the voting
system(s) in use in the county? And 7) How to vote a provisional ballot, including written information on how the voter can ascertain whether his or her vote was counted, and if not, why.

Although HAVA funds were not spent on education prior to the 2004 elections we, at the state level:

- Revised all of our brochures, including Services Available to Voters with Special Needs, Texas Voting, Early Voting in Texas, and Volunteer Deputy Registrar Guide. Those brochures are on our web site and also available in hard copy.
- The following brochures have been developed, and are available via our web: Young Texas Voters; When Your Home is Your Polling Place; and Conducting a Successful Voter Registration Campaign.
- The following new items/brochures were developed and disseminated statewide to election officials and upon request to voters: What Every Texan Needs to Know About Elections in Texas (targeting First Time Voters); Voter Rights Poster and Overvote/Undervote Poster.
- We developed and disseminated the Project V.O.T.E. (Voters of Tomorrow through Education) Student Mock Election Curriculum for teachers regarding the conduct of a mock election, for Texas students, kindergarten through 12th grades. Over a half million students participated in the 2004 Texas Student mock election.
- A PowerPoint Presentation was developed titled “Voter Education-A General Overview.” This presentation was/is designed for civic groups, charitable and non-profit organizations for conducting voter registration drives.
- The Secretary of State appointed a virtual voter education advisory committee composed of voter advocacy groups and other interested stakeholders to advise the Secretary of State on HAVA-related voter education materials and programs.

c. Election Officials Education and Training

- The state developed a comprehensive training component for Election Officials that included videos; pamphlets; updated handbooks; and an election-based training module prior to January 2004. The new training program and educational resources explain all the components of HAVA, including: overvote and undervote; provisional voting; DRE’s; voters rights; the administrative hearing process; new voting system requirements; statewide voter registration system requirements; methods of poll worker training; accessibility for people with disabilities; and alternative language requirements.
- The state will look into the possibility of developing an outreach program working with the Department of Public Safety (DPS) to provide resources and materials to improve the voter registration process no later than July 2006.
The state will continue to work proactively with election officials to assist and advise in the recruitment of college and university students as poll workers. The state will investigate the possible creation of an on-line training module for election officials, with a possible certification component no later than January 2006.

d. Training of Poll Workers

The State has developed and disseminated statewide a new curriculum for Election Judges and Clerks, complete with a training video for preparing the polling place, qualifying voters, closing the polling place and discussing new law and HAVA. The curriculum for Election Judges and Clerks also has a testing component. We were successful in training over 49,000 poll workers before our 2004 Primary Elections.

Regional schools for the training of election judges and clerks for the 2004 Election were conducted prior to the Primary and General Elections. Secretary of State staff traveled the state, educating election officials about Texas law, HAVA, and in some locations, we partnered with the Coalition of Texans with Disabilities, who presented a unit on voters with disabilities and educating election officials on the rights of disabled voters.

4. How the state will adopt voting system guidelines consistent with Sec. 301 (Sec. 254, a, 4).

Voting System Standards

The state of Texas’ voting systems standards contained at Section 122.001 of the Texas Election Code are already in substantial compliance with the requirements set out in Section 301(a)(1) of HAVA. Pursuant to an administrative rule adopted by the Secretary of State, Rule 81.61, before any voting system may be certified for use in a Texas election, the voting system must meet the voluntary voting systems standards promulgated by the Federal Election Commission. Texas Administrative Code § 81.61 (Tex. Sec. of State).

Overvote and Opportunity to Correct Ballot

All systems used in Texas allow a voter to change his or her vote. In a paper or optical scan ballot system, a voter may receive up to two replacement ballots if he or she makes an error marking the original ballot. Texas currently posts voting instructions that inform the voter of his or her right to replace a spoiled ballot.

Precinct-level optical scan voting systems inform the voter of an overvote in a particular race and give the voter an opportunity to correct the ballot. Texas Administrative Code § 81.52 (Tex. Sec. of State). Direct Recording Electronic voting systems (“DRE’s”) currently certified for use in Texas and mechanical lever machines do not allow for overvoting. In those entities using hand-counted paper ballot, central count optical scan, mechanical lever machines or punch card voting systems, the voter is not informed when he or she overvotes in a race. However, language will be added to voter instructions to inform voters of the
definition and consequences of an overvote, and Texas will establish a voter education program to explain the effect of overvoting. Punch card and lever voting systems will be phased out of use. The Texas Legislature passed legislation this year to prohibit their use after January 1, 2006.

All of the systems used in Texas allow voters to view their choices before they cast their ballot. DRE voting systems are already required under current state law to present voters with a summary screen of the entire ballot to allow voters to review and change their choices prior to the final cast of the ballot.

Manual Audit

Electronic voting systems are required under state law to provide records from which the operation of the voting system may be audited. In addition, the Secretary of State has adopted an administrative rule, Section 81.61, which requires a real time audit log that records all significant election events and records the date and time of each event. Also, due to the fundamental inability of lever machines to produce a manual audit of its records, Texas has recently passed a law that prohibits the use of these systems in elections after January 1, 2006.

Accessibility

Under HAVA, the voting system must be accessible to individuals with disabilities in a manner that provides the same opportunity for access and participation as for other voters. HAVA provides that this requirement may be met by placing a DRE or other accessible voting unit in each polling place.

Texas law currently requires voting systems acquired on or after September 1, 1999 to comply with Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Section 794) and its subsequent amendments and Title II of the federal Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) and its subsequent amendments; and to provide a practical and effective means for voters with physical disabilities to cast a secret ballot. Detailed guidelines as to what constitutes an accessible voting system have been adopted by administrative rule which is enclosed. In all the remaining polling places throughout the state which use voting systems that do not meet the accessibility guidelines, counties will purchase at least 1 DRE per polling place in order to satisfy the requirements.

The state legislation implementing HAVA repeals the current voting system accessibility law and replaces it with language which tracks the federal law for accessibility. Until the Election Assistance Commission issues HAVA-compliant accessibility standards, Texas will continue to evaluate accessibility based on the state rule and FEC accessibility standards.

Language Accessibility

Because Texas is a state covered by Section 1973aa-1a and Section 1973b(f)(4) of the federal Voting Rights Act, voting systems are already required to provide alternative language
accessibility to the ballot. Statewide, Spanish has been required since 1975 and ballots have been required to be in English and Spanish since that time. As a result of the 2000 census, in some areas of the state, Vietnamese, Kickapoo, and Pueblo languages are required. Review of whether a voting system provides alternative languages is already an element of voting system certification in Texas.

Error rates

HAVA requires that the counting error rate of voting systems must comply with the standards established under the Federal Election Commission. Secretary of State Administrative Rule 81.61 requires that before a voting system may be certified for use in Texas, the voting system must meet the voluntary voting system standards promulgated by the Federal Election Commission. In addition, the state legislation adopted to implement HAVA amends the Texas Election Code to require that all voting systems comply with the error rate standards adopted by the Federal Election Commission.

Definition of “Vote”

Current state law contains a detailed definition of a punch card vote. Texas has recently passed legislation that fully defines what constitutes a vote cast under hand-counted paper ballot, optical scan, and lever machine systems. See Exhibit D.

5. How the Election Fund will be established and managed (Sec. 254, a, 5).

The Texas Legislature created an “Election Improvement Fund” as a dedicated account in the general revenue fund and consists of federal funds designated for election improvement, matching funds from the state or a political subdivision, and depository interest earned on the assets of the fund. The state has appropriated funds to satisfy the five percent match requirement of Section 253 of HAVA in House Bill 1549, 78th Regular Session, 2003. The fund will be managed according to the Uniform Grant Management Standards prescribed by the Texas Office of the Governor and the terms and conditions of the federal grant award(s). The SOS has also hired a grant manager as well as an accountant to oversee and administer the grant program.

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.

The budget below is based on the state’s best estimate. The SOS anticipates some adjustments will be necessary; however, the Secretary of State will reconvene the HAVA Advisory Committee for advice on how to reallocate the funds if the change is substantive. It should be noted that the “free access system for provisional voters has been adjusted to $0 because the state is already in compliance with that requirement.
7. Statement that the state will, in using the requirements payments, provide for maintaining the funding for activities funded by the payments at a level not less than the fiscal year ending before November 2000 (Sec. 254, a, 7).

The Secretary of State has determined that the activities funded by the requirements payments as outlined in this state plan will not reduce the level of expenditures maintained by the state for the fiscal year ending prior to November 2000. Additionally, since the initial state plan was filed, the SOS has determined that the requirements payments activities as outlined in this plan have never been funded by the state to the counties prior to the fiscal year ending before November 2000. Consequently, the counties need not certify they are in compliance with the maintenance of effort requirement as originally proposed as it is not applicable.

8. How the state will adopt performance goals and measures to determine success in carrying out the plan (Sec. 254, a, 8).

The Secretary of State and county election officials are responsible for ensuring the success in meeting each performance goal. Each county’s voter registration and elections office also have a substantial responsibility in meeting performance goals in that the counties will monitor performance measures and will report to the state on a regular basis.

The performance goals include:

**ELIMINATION OF PUNCH CARD VOTING AND LEVER EQUIPMENT**

a. Timetable: January 1, 2006
b. Criteria: Replacement of punch card voting equipment and lever machines in 17 counties that used voting equipment in 2000.
c. How criteria is measured: Assess 17 counties after January 1, 2006 to determine if any punch card or lever machines are being used in federal elections.

d. The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

VOTING SYSTEM STANDARDS

a. VOTING SYSTEMS

(1) Timetable: January 1, 2006

(2) Criteria: All voting precincts in the state will have a voting system that provides voters an opportunity to check for and correct ballot errors in a private and independent manner, notifies the voter of any overvotes cast and the effect of casting an overvote, allows the voter to correct the overvote before the ballot is cast, has a manual audit capacity, and an error rate that does not exceed the existing rate established by the FEC or Office of Election Administration. For the precincts that do not have such a system in place, an extensive voter education program will be developed and used in each county. A program will be developed for each type of voting system and paper ballot to educate the voter on what constitutes a legal vote for each type of voting machine and how to correctly cast a ballot for each type of voting system.

(3) How criteria is judged: Assess all counties to ensure 100% participation in using voting systems that meet the HAVA requirements or using the education program developed by the Secretary of State.

(4) The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

b. ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES

(1) Timetable: January 1, 2006

(2) Criteria: Provide at least one direct recording voting device in each polling place in the state that will allow voters with disabilities the opportunity to cast a ballot without assistance.

(3) How criteria is judged: Assess each county to ensure 100% of the polling places have implemented a direct recording voting device that allows voters with disabilities the opportunity to cast a ballot without assistance.

(4) The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

c. ALTERNATE LANGUAGE ACCESSIBILITY

(1) Timetable: Currently

(2) Criteria: Provide alternative language accessibility pursuant to the federal Voting Rights Act.
(3) How criteria are judged: Texas has provided alternative language for all voting systems, voting materials and forms used in the polling place since 1975. Before a voting system is certified by the Secretary of State, the voting system must demonstrate alternate language accessibility.

(4) The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

PROVISIONAL VOTING

a. PROVISIONAL BALLOTS PROVIDED
(1) Timetable: January 1, 2004
(2) Criteria: Provide provisional ballots to ensure no individual is turned away at the polls.
(3) How criteria is judged: Assess all counties to ensure the new procedures for provisional voting are in place and that all election workers have been trained on the new procedures.
(4) The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

b. FREE ACCESS SYSTEM
(1) Timetable: January 1, 2004
(2) Criteria: Implement a free access system in each county so that the voters can determine if their provisional ballot was counted.
(3) How criteria is judged: Success of meeting this performance goal is based on the establishment of a free access system in each county so that voters can determine if their provisional ballot was counted.
(4) The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

c. INFORMATIONAL VOTING POSTER
(1) Timetable: January 1, 2004
(2) Criteria: Voter information must be posted at each polling place, to include: sample ballots; dates and hours of voting; instructions for voters registering by mail and for first time voters; voter rights (including the right to vote a provisional ballot); and legal notice prohibiting voter fraud and misrepresentation.
(3) How criteria is judged: Survey all counties to ensure that the voting poster is included with election supplies and that all election workers have been instructed to post such information in the polling place.
(4) The Secretary of State will prescribe and distribute informational posters to all counties prior to January 1, 2004. The county election officials are responsible for ensuring the poster is properly posted in each precinct.
STATEWIDE VOTER REGISTRATION SYSTEM

a. COMPUTERIZED STATEWIDE VOTER LIST
   (1) Timetable: January 1, 2006
   (2) Criteria: Implementation of a single, uniform, official, centralized, interactive, computerized statewide voter registration list that is defined, maintained, and administered at the state level.
   (3) How criteria is judged: Success of meeting this performance goal is based on the implementation of a statewide voter registration system that meets the requirements of HAVA.
   (4) The Secretary of State in conjunction with the county election officials is responsible for meeting this measure.

b. NEW VOTER REGISTRATION APPLICATION
   (1) Timetable: January 1, 2004
   (2) Criteria: Prescribe, print and distribute new voter registration applications that meet the requirements of HAVA.
   (3) How criteria is judged: The Secretary of State will prescribe, print and distribute a new voter registration application to all counties prior to January 1, 2004.
   (4) The Secretary of State in conjunction with the county election officials is responsible for meeting this measure.

The Secretary of State will collect specific data to identify the successes of each county as it relates to the implementation of the Help America Vote Act of 2002 (HAVA). The Secretary of State will compile the data in report(s) for tracking purposes and to share with interested parties such as the EAC. The report will include an indication of whether each county met the performance goals. If the Election Assistance Commission or any other federal agency should prescribe such a report or survey, the state will use the federal form in lieu of the state form.

9. Description of state based administrative complaint procedures (Sec. 254, a, 9):

The Secretary of State has adopted an administrative complaint procedure through its rulemaking authority. Complaints are limited to those arising from violations of Title III of HAVA. As required under Section 402(2) of HAVA, complaints shall be required to be in writing, signed by the complainant, and notarized. The Secretary of State will have authority to consolidate complaints for efficiency and to resolve any complaints through an informal process, if warranted.

Review of the complaint will be held pursuant to the right of notice, hearing, and adjudication as set out in the administrative rule.
10. A description of how payments for punch card replacement and early out money affects the activities under the plan, including the amount of funds available (Sec. 254, a, 10).

Punch card and lever voting system replacement award agreements were sent to all eligible counties in April 2004. The Title I funds will be distributed, administered, and monitored using the same standards as the requirements payments that are distributed to the counties.

11. Description of how the state will conduct ongoing management of the plan (Sec. 254, a, 11):

The Secretary of State has hired a HAVA grant manager, a HAVA grant accountant, a project manager to oversee the development and implementation of the HAVA-compliant statewide voter registration system, and will hire monitoring staff or outsource that function. All procurement with HAVA funds will be consistent with applicable state and federal laws and regulations, including the Texas Government Code and the Texas Building and Procurement Commission. All sub-awarded grants will include an award agreement with the terms and conditions governing the use of the funds and will adopt by reference the State of Texas Uniform Grant Management Standards, OMB Circular A-87, OMB Circular A-102, “Common Rule”, Administrative Requirements, 53 FR 8087, March 11, 1988, and OMB Circular A-133.

If material changes to the state plan are necessary, the Secretary of State will propose the change in the Texas Administrative Register. In addition, the Secretary of State intends to continue working with the HAVA Advisory Committee as the plan is implemented. The State Plan provides a general framework of HAVA implementation in Texas, but the Secretary of State will continue, as needed, to adopt administrative rules to define specific procedures for provisional voting and other HAVA-related issues as well as modify and design forms as the implementation of HAVA continues to evolve. As rules are proposed and as new voter forms are drafted, the Secretary of State will distribute the drafts to the HAVA Advisory Committee for comments and suggestions.

12. Description of how the plan reflects changes from the state plan for the previous fiscal year.

Each section has been updated accordingly and reflects the current state plan.

13. A description of the committee that participated in the development of the plan (Sec. 254, a, 13).

An advisory committee was appointed by the Secretary of State to help develop the State Plan. We enlisted professional associations, voter advocacy groups and other relevant associations, and requested that each association appoint a representative to serve on the advisory committee. The Committee conducted public meetings on the following dates: April 3, 2003, May 1, 2003, June 27, 2003, February 20, 2004, and November 12, 2004. Minutes of all Committee meetings are posted on the Secretary of State website at http://www.sos.state.tx.us/elections/hava/index.shtml. The Preliminary Texas State Plan was
posted on the web on July 25, 2003 and also published in the Texas Register on August 1, 2003. Public comment was accepted through September 2, 2003.

The proposed amended budget was posted on the Secretary of State agency website on November 5, 2004 and was discussed at the November 12, 2004 meeting of the HAVA Advisory Committee. In addition, notice of the proposed amended budget was published in the Texas Register on November 5, 2004.
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<tr>
<td><strong>Teresa Aguirre</strong></td>
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<td>Texas Association of Counties</td>
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<td><strong>Phil Barrett</strong></td>
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<td>Texas Department of Information Resources</td>
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<td><strong>Brett Carr</strong></td>
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<td>Senate State Affairs</td>
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<td><strong>The Honorable Mary Denny</strong></td>
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## Table 2

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<td>VOTING AGE POP.</td>
<td>FY03 Approp.</td>
<td>FY04 Approp.</td>
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<td>County Education Fund</td>
<td>Accessible Voting System</td>
<td>General HAVA Compl. w/ $5,000 Minimum</td>
<td>200% FY03 Accessibility and Gen. HAVA Comp. Funding</td>
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<td>$69,000.00</td>
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<td><strong>$25,758,000</strong></td>
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<tr>
<td>Punch Card</td>
<td>Current law-Section 127.130(d) of the Texas Election Code:</td>
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</tr>
<tr>
<td>(d) Subject to Subsection (e), in any manual count conducted under this code, a vote on a ballot on which a voter indicates a vote by punching a hole in the ballot may not be counted unless:</td>
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<td></td>
<td></td>
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</tr>
<tr>
<td>(1) at least two corners of the chad are detached;</td>
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<td></td>
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</tr>
<tr>
<td>(2) light is visible through the hole;</td>
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</tr>
<tr>
<td>(3) an indentation on the chad from the stylus or other object is present and indicates a clearly ascertainable intent of the voter to vote; or</td>
<td></td>
<td></td>
<td></td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>(4) the chad reflects by other means a clearly ascertainable intent of the voter to vote.</td>
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<td></td>
</tr>
<tr>
<td>(e) Subsection (d) does not supersede any clearly ascertainable intent of the voter.</td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Optical Scan, Direct Recording Electronic, and Paper Ballot Systems</td>
<td>Effective January 1, 2004, Section 65.009(d) of the Texas Election Code will provide:</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>The intent of the voter in marking a ballot may be determined by: (1) a distinguishing mark adjacent to the name of a candidate or political party or a voting choice associated with a proposition; (2) an oval, box, or similar marking clearly drawn around the name of a candidate or political party or a voting choice associated with a proposition; (3) a line drawn through: (A) the names of all candidates in a manner that indicates a preference for the candidates not marked if the names of the candidates not marked do not exceed the number of persons that may be elected to that office; (B) the name of each political party except one in a manner that clearly indicates a preference for the political party not marked; or (C) a voting choice associated with a proposition in a manner that clearly indicates a preference for the other voting choice associated with the proposition; or (4) any other evidence that clearly indicates the intent of the voter in choosing a candidate or political party or deciding on a proposition.</td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>