



County of Santa Cruz

COUNTY CLERK / ELECTIONS

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GAIL L. PELLERIN, COUNTY CLERK

Informational Report Help America Vote Act / Voting Modernization

Background

The Help America Vote Act (HAVA) was passed by Congress in 2002 to provide assistance with the administration of and establish minimum election administration standards for federal elections. HAVA provides the states with funds, which, in part, are to be disseminated to the counties to meet the various provisions of the Act. The Act requires:

1. Nationwide implementation of provisional voting
2. Voter ID requirements for new voters in federal elections
3. Replacement of punch card and lever voting machines
4. Voting system accessibility for voters with specific needs
5. A centralized statewide voter registration database in each state and territory
6. Specialized handling of absentee ballot applications for military and overseas voters
7. Each state and territory to define what constitutes a valid vote

California had already implemented many of these requirements, including provisional voting, permanent absentee voting for military and overseas voters, and the establishment of voting systems standards defining a valid vote. With minor modifications to our existing systems and procedures, California counties have been able to meet these requirements with relative ease.

Statewide Database

While not a direct responsibility of counties, the implementation of a statewide database will impact counties' operations and the level of service we are able to provide to voters. California plans to implement a "bottom-up" system, with the counties maintaining the voter file and precinct and district boundaries, and transmitting this information up to the State. The existing Calvoter statewide system will be modified to meet the January 1, 2006, deadline; however, there is serious doubt that this system can meet HAVA requirements of interactivity with any election official obtaining immediate electronic access to voter information as well as electronic transmission of voter registration data into the single system. Therefore, the State plans to develop a new statewide database

to meet these requirements. No specific timetable has been developed for the new system, and this could have a significant impact on county procedures.

The federal voter ID requirements will require that new voters provide on their voter registration card either a California Driver's License or the last four digits of the voter's Social Security number, and the Secretary of State must verify the data in order for the voter to be eligible to vote. Voters who are re-registering from anywhere within the State, updating a name, address or political party, do not have to provide this identification. The identification requirement applies only to voters registering for the very first time within the State. With the existing 15-day deadline to register to vote prior to each election, it will be very difficult to obtain the "official" list of voters from the State prior to the election. Voters who do not have the required ID recorded on their voter's registration card, will have to show appropriate ID when voting, or vote a provisional ballot. We anticipate this will result in more voters using provisional ballots.

Voting System Requirements

Title III of HAVA sets forth voting system standards for use in federal elections. These standards require that any voting system used in a federal election meet the following requirements:

1. Permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted.
2. Provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and
3. If the voter selects votes for more than one candidate for a single office –
 - a. notify the voter that he/she has selected more than one candidate for a single office on the ballot;
 - b. notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and
 - c. provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.
4. A jurisdiction that uses a paper ballot voting system (such as the Mark-A-Vote voting system used by Santa Cruz County), a punch card voting system or a central count voting system (including mail-in ballots), may meet the requirements of 3 above by :
 - a. establishing a voter education program specific to that voting system, that notifies each voter of the effect of casting multiple votes for an office; and
 - b. providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).

At the time HAVA was enacted, only one county in California, Riverside, had a voting system that allowed any voter, regardless of disability, to vote a secret ballot. That system was a Direct Recording Electronic (DRE) touch screen voting system. With the mandate that all voting jurisdictions in all states provide at least one accessible voting unit in all polling sites by January 1, 2006, voting system manufacturers were placed in a severe time constraint to produce HAVA-compliant systems that would be federally qualified and state certified by the deadline.

By the spring of 2004, more than a dozen California counties had acquired HAVA-compliant DRE voting systems; however, these systems were decertified by then Secretary of State Kevin Shelley for lack of an accessible, voter-verifiable paper audit trail (AVVPAT). The AVVPAT is not a requirement of HAVA, nor was it required for state certification at the time these systems received certification. Secretary Shelley later conditionally certified all but four counties' systems for use in the November 2004 election. In September 2004, SB 1438 (Johnson & Perata) was signed into law, requiring all DRE voting systems to have an accessible voter verifiable paper audit trail by January 1, 2006.

Voting equipment manufacturers, who were already under extreme time constraints to develop HAVA-compliant voting systems, were then faced with the additional task of developing AVVPAT additions for their existing DRE's, as well as AVVPAT equipped DRE's. As a result, since the time that HAVA was enacted in 2002, California has conditionally certified only one voting system – and that system, as of this writing – is certified for use only in Santa Clara County and does not have the software to conduct a primary election. Therefore, there are currently no voting systems certified for use in California that meet both the requirements of HAVA and the state requirement of an AVVPAT. Moreover, it is anticipated that very few systems will be certified for purchase by counties in time to meet the January 1, 2006, deadline. Furthermore, state and federal legislation and guidelines continue to be considered that may further change the voting system requirements for systems used in California.

Current Status

Santa Cruz County has used the Mark-A-Vote voting system, a multi-card, optical scan voting system since 1995. The voting system is user-friendly, secure, reliable, accurate, and has withstood the challenge of recount and voter intent legal challenges. The advantages of the Mark-A-Vote system include the adaptability of the system to the absentee voting process, the ability to add cards as needed to accommodate an unlimited number of contests on the ballot, voter-friendliness, and cost-effectiveness. Also, as a paper-based voting system, it provides a voter verifiable paper audit trail.

Absentee ballots, which comprised over 38 percent of the ballots cast in Santa Cruz County in the last General Election, are mailed to voters relatively inexpensively, because the ballots, information and envelopes do not exceed one or two ounces. Return postage rates have not exceeded a single first class postage stamp, except for the one election that required seven ballot cards per voter. Ballots are counted centrally by four high-speed card readers rated at 1,000 cards per minute per reader. Because of the high number of voters voting by absentee ballot, a majority of the ballots cast can be counted and results released shortly after 8 p.m. on election nights.

An invisible, but highly critical, advantage of the Mark-A-Vote voting system is that it is a component of a fully integrated election management system. The DFM Election Information Management System is a highly complex management system that tracks voters, districts, precincts, poll workers, offices, incumbents and candidates. By utilizing a fully integrated system, the potential for error in the printing and ordering of Sample and Official Ballots, as well as the potential for errors in ballot counting, is greatly diminished.

The shortfalls of the Mark-A-Vote voting system are that it:

1. does not easily accommodate additional languages (not currently a requirement for Santa Cruz County),
2. does require that voters mark in the voting target area when voting for a write-in candidate, which is an issue that was recently challenged in San Diego County,
3. does not inform a voter of the effect of casting multiple votes for an office nor does it advise the voter if they left a contest blank (“second chance voting,” which can currently be accomplished by voter education), and
4. does not allow a voter with disabilities to cast a ballot unassisted, nor is the voter-verifiable paper audit trail accessible to visually impaired voters.

Meeting HAVA Requirements

The primary implementation issue facing Santa Cruz County as a result of HAVA is the requirement that by January 1, 2006, each precinct be equipped with at least one device that will allow voters with disabilities to vote in privacy, unassisted. Ideally, a HAVA-compliant voting system will be certified that is compatible with the Mark-A-Vote voting system. A HAVA-compliant compatible system would enable us to continue to use the Mark-A-Vote system and supplement it with one precinct-based, HAVA-compliant unit accessible to voters with disabilities. At this time, there is at least one such system going through the federal qualification process; however there are not yet any systems that are both federally qualified and state certified.

If no HAVA-compliant system compatible with Mark-A-Vote is federally qualified and state certified in time for purchase and implementation, we will be required to run two separate elections simultaneously on two separate systems (Mark-A-Vote and a HAVA-compliant system)— each with its own ballot layout, voter instructions and counting components. The alternative (if HAVA and state-compliant DRE systems are state certified in time for purchase and implementation) will be to replace the Mark-A-Vote ballot system with either a full DRE system, or a precinct count optical scan voting system, with one DRE per precinct. There are no federally qualified and state certified, HAVA and state compliant systems in existence to date.

The downside of DRE or precinct count optical scan systems is that they are very expensive to purchase and maintain, require special delivery accommodations and secure short-term storage at the poll sites, and require significant storage space in a climate-controlled environment with electrical connections to keep the batteries charged. Ongoing costs for voting systems cannot be recouped via any of the funding mechanisms available. Vendors charge configuration fees prior to each election for the configuration of election-specific data. Further, either the DRE or precinct count optical scan system would require central count optical scan ballots for absentee voters; in

Santa Cruz County this accounts for more than 38% of those who vote. Optical scan ballots that are not multi-card systems like Mark-A-Vote, are very large ranging anywhere from 8 ½"x 11" to 10" x 24," depending on the individual system and the number of contests on the ballot. These ballots are more expensive to mail, both to and from voters, very difficult to flatten (they must be folded to be mailed and flattened to be counted) and extremely slow to count. One California county reported that in the last General Election, they were fortunate to count 1,000 ballots per hour.

It is imperative when considering replacing a voting system that there be ample time to educate voters, change all written processes and procedures, and identify suitable storage facilities to secure and maintain the equipment. Looking at the calendar before us today, with only 6 months until the deadline, with no system certified, and a potential special statewide election in the fall that will divert time and energy away from implementation plans for a new system – the prospects are bleak.

Second Chance Voting

HAVA specifically allows jurisdictions to develop voter education programs to inform voters of the consequences of overvoting or undervoting, as well as providing information to voters on how to correct an error on the ballot, including requesting and receiving a new, replacement ballot, in lieu of providing "second chance voting." This provision was included in recognition of the numerous paper based, central count voting systems in use, and of jurisdictions that provide balloting entirely by mail. With the Mark-A-Vote system, voters are informed of the potential for error through education. We have developed instructional posters for polling locations and instruction pages for Sample Ballots.

However, other pending federal legislation would require automatic second chance voting at the polls – that is, providing a device that would read the ballot prior to its being cast, and automatically inform the voter that the ballot contained one or more overvotes or undervotes. Should future legislation require that the voting system be equipped with these features, Mark-A-Vote would have to either be enhanced with an as-yet unknown precinct count capability, or be replaced with a precinct-based, optical scan system or other federally qualified and state certified system with this capability.

Funding

There are currently two sources of funds available to counties for the upgrade of voting systems, including meeting the accessibility requirements of HAVA: Proposition 41 state bond money and federal funding through HAVA.

Proposition 41, the Voting Modernization Bond Act of 2002, was passed by the voters of California prior to the passage of the federal Help America Vote Act. Proposition 41 funds were intended to assist counties with the purchase of updated voting systems. The Act established a Voting Modernization Board (VMB), charged with the duty of distributing voting modernization funds to counties. The state legislature has determined that Proposition 41 funds may be used to meet the accessibility requirements of HAVA. To apply for Proposition 41 funds, each county must submit a Project Documentation Package (which must include a signed contract with a voting system vendor) by a deadline set by the VMB. The deadline for submission has twice

been extended by the VMB, due primarily to the fact there have been no state-certified systems to be considered. The current deadline for submission of a project documentation package is January 1, 2006, with interim reports due to the VMB on a regular basis.

Proposition 41 funds are available on a 3:1 (state:county) match and have a state funded cap of \$3,000 per unit for DRE voting systems. HAVA funds may be used to meet the county match. Santa Cruz County's share of the Proposition 41 funds is approximately \$1.6 million; however, the Voting Modernization Board has indicated that it is not inclined to hold funds indefinitely, and will consider redistributing unused funds to other counties after the first funding round is complete. The only exemption allowed from the redistribution of funds is if a county were to propose to adopt a phased in approach to modernizing voting equipment.

The Help America Vote Act includes funding for numerous activities, including meeting the voting system accessibility requirements. As a result of numerous meetings between the Secretary of State's staff, the Secretary of State's HAVA Section 301 Task Force (comprised of 21 county elections officials and 9 community representatives), and representatives of the California State Association of Counties (CSAC), it was agreed that \$195 million should be allocated to counties following the same formula as that by which the Proposition 41 funds were allocated. These funds may be used for complying with the voting system requirements imposed by HAVA (including reimbursement for the county's portion of the 3:1 match under Proposition 41), voter education and training of poll workers to use the new equipment. This grant availability is conditional upon the State receiving the remaining funds from the federal Election Assistance Commission (EAC), which is the highest priority for Secretary of State Bruce McPherson. Assuming full availability of the funds, Santa Cruz County's share of the HAVA Section 301 funds is approximately \$1.3 million.

Other funding provided by HAVA includes the following:

Punch Card Voting System Buyout. Pursuant to Section 102, jurisdictions utilizing punch card voting systems were eligible for funds to replace those voting systems. Santa Cruz County does not utilize such a system and therefore was not eligible for such funds.

Voter Education and Poll Worker Training. In July 2004, then Secretary of State Kevin Shelley announced a HAVA "grant" to counties for voter education and poll worker training for the November 2004 election. Unfortunately, there was insufficient time allowed for counties to submit thorough grant applications, and it was a requirement that the funds be spent on equipment or activities related to the November 2004 election. Moreover, despite the misnomer of "grant," the funding took the form of a reimbursement, as counties first had to spend the money and then seek reimbursement. As a result, counties were not able to obtain the full amount of "grant" money originally allocated to them, and claims exceeding the estimates were paid only to the amount of the estimated cost. Santa Cruz County was originally allocated \$85,000 and submitted a "grant" application for the full amount. With the Secretary of State rejecting some items in the application, and insufficient time to implement others, Santa Cruz County received \$61,688 in reimbursement in FY 04-05 for existing costs.

Further, it is proposed in the Secretary of State's Spending Plan that an additional \$4,500,000 be distributed to counties based on the Proposition 41 funding formula for continuing voter education and poll worker training in fiscal year 2005-2006 and \$5,000,000 in fiscal year 2006-2007. Santa Cruz County's share of the 2005-2006 funds is approximately \$39,000, and its share of the 2006-2007 funds is approximately \$43,000.

Election Assistance for Individuals with Disabilities (EAID). The Election Assistance for Individuals with Disabilities (Section 261 funds) was first announced as a competitive grant prior to the November 2004 election. Counties and community-based organizations were to compete for these funds. Santa Cruz County spent extra staff time to make sure a thorough grant for \$54,600 was submitted on time. The state has since decided to forego the competitive grant process for these funds and instead award them to counties only based on the same funding formula used to allocate Prop. 41 funds. This funding formula results in a \$35,000 reduction in grant funds for Santa Cruz County.

These funds are intended to provide for improving accessibility to, and participation in, the elections process for individuals with disabilities. Specifically, the funds are to be spent on improving accessibility of polling locations, accessibility training for election officials, poll workers and volunteers, providing information about accessibility, and serving the needs of voters with disabilities who reside in rural areas. These funds were supposed to be awarded in Fiscal Year 2004-05 and counties have now been advised that funds will not be awarded until Fiscal Year 2005-06. These funds, too, will be reimbursed to counties after expenditures are made.

Title 24 and ADA Accessible Polling Sites

The other challenge facing election officials is securing polling sites that are compliant with Title 24 of the California Building Code of Regulations and the Americans with Disabilities Act Accessibility Guidelines. The State Attorney General's Office began an investigation into Santa Cruz and Kern County polling sites in 2002. Investigations of polling sites have now been extended to other counties as well.

Santa Cruz County has been working with the State Attorney General's Office since 2003 to improve polling place access. A polling site survey tool was provided by the Secretary of State in August 2004 and developed in consultation with the State Department of Justice and the Office of the State Architect. We were advised that the survey tool complied with Title 24 and ADA. Unfortunately, the Department of Justice used a different survey tool in November 2004 that applied different access requirements than the survey tool provided to counties in August 2004. We are now attempting to determine which survey tool we should use to complete our county's actions outlined in our Polling Place Accessibility Plan.

Our plan calls for grouping sites into the following categories: compliant, compliant with temporary one-day mitigation (portable ramps, temporary thresholds, signage, cones to create van accessible parking spots, etc.) or structurally non-compliant (significant barriers that cannot be removed without major construction).

Our ultimate challenge is to determine what our options are for structurally non-compliant facilities after we complete the following tasks:

- a. Document and review all possible alternative sites;
- b. Determine if the site can be moved to another site where one or more polling places are located. Such consolidation requires adequate parking to accommodate the increased number of voters who will vote on Election Day;
- c. Work with State Attorney General's Office and Secretary of State's Office on determining if any legislative remedies exist;
- d. Determine any other course of action.

Our preliminary data for Santa Cruz County indicates that after all efforts to mitigate non-compliant facilities, encourage facility owners to correct compliance problems, and identify compliant facilities, there will remain a substantial number of polling sites that do not comply with Title 24 and ADA. It is important to note that of the 165 polling sites used by Santa Cruz County, only 8 sites are owned by the county. Other sites are owned by the cities, schools, fire departments, churches, businesses and some residential owners. Our plan is to work with all these owners to discuss improving access to their buildings. Unfortunately, we are plagued with situations similar to the one involving our newly built Landmark School constructed by the Office of the State Architect, the enforcer of Title 24, that does not comply with Title 24.

In Santa Cruz County we will continue our aggressive voter outreach program that includes:

- Quarterly meetings with Voter Accessibility Advisory Committee to obtain community input on changes the department can make to improve access for voters with specific needs.
- Provide information in Voter's Information Pamphlet mailed to all voters alerting them to ballot delivery and voting assistance services provided by county elections officials. In addition, send out media releases alerting voters to this service.
- Voter outreach program with convalescent homes, residential care facilities and independent living centers to provide site visits to register voters and schedule times for voter assistance.
- Voter outreach program to individuals who require at-home or individual on-site assistance. This service includes delivery and pick up of ballots and other voting materials, as well as assistance in marking or reading the ballot upon request.
- On Election Day dedicate two staff persons for assistance to voters that suddenly find themselves unable to access a polling place due to unforeseen illness, disability, etc.
- Access programs at the polls including curbside voting program, magnifying glasses, attachments to make writing utensils easier to grasp, etc.

Despite these efforts, we understand the State Attorney General continues to build a case against Santa Cruz County.

Summary of Outstanding Issues

1. Impacts on the County Clerk/Elections Department workload and procedures resulting from implementation of the fully interactive statewide database
2. Meeting HAVA requirement of one accessible voting device per precinct to allow voters with disabilities to vote privately, unassisted
 - Lack of federally qualified, state certified systems
 - January 1, 2006, deadline for compliance with HAVA
 - January 1, 2006, deadline for Proposition 41 Project Documentation Package
3. Meeting Title 24 and ADA accessibility at polling sites
4. Potential federal legislation requiring automatic second-chance voting at the polls

Summary Chart – Potential Funding

Funding Source	Total Amount California	Santa Cruz County Share	Amount received as of 6/1/05	Purpose of funds - Restrictions
Proposition 41	\$195,000,000	\$1,698,328	0	Modernization of Voting System – 3:1 match, \$3000 cap state funding per DRE
HAVA Sec. 301	\$195,000,000	\$1,698,328	0	Purchase of Accessible Voting Equipment – can be used for County’s Prop. 41 match.
HAVA– Title III distributed over next 3 fiscal years: 04-05 / 05-06 / 06-07	\$19,409,000	\$167,000	\$61,689	Voter Education and Poll worker Training – spread over 3 years
DHHS Sec. 261 EAID	\$2,357,711	\$20,536	0	Election Assistance for Individuals with Disabilities – Polling Place survey and retrofit
Total	\$412,066,711*	\$3,584,192	\$61,689	

* The State of California has received other HAVA funds related to the punch-card buyout, development of the Statewide, revision of Voter Registration Forms, Voter Education, Adherence to Voting Systems Guidelines, Source Code Review, Poll Monitoring, Federal Auditing and a Reserve Fund.