

# PRELIMINARY STATE PLAN

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## HELP AMERICA VOTE ACT OF 2002 (HAVA)

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Montana  
SECRETARY OF STATE  
BOB BROWN





June 4, 2003

Dear Fellow Montanans:

Last year, Congress passed the Help America Vote Act (HAVA) to ensure that voters across the United States are treated equally. The significant changes brought about by HAVA will make the elections process even better; and, in bringing about these changes, my office is keeping the Montana voter in mind every step of the way.

HAVA brings with it many changes in our state election process. It requires us to replace punch-card ballots, make specialized voting equipment available in every precinct, and implement new statewide systems to address voter grievances, voter registration, and provisional balloting. These are all daunting tasks that bring powerful new responsibilities.

HAVA also requires Montana to adopt a state plan that identifies the priorities and specific steps our state will take to address election reform and bring Montana into compliance with the federal law.

It is with great pleasure I present the 2003 Preliminary State Plan for election reform. It was developed with the important assistance of an Election Reform Advisory Commission made up of 20 interested citizens. A list of these citizens and the organizations they represent is included in the plan.

HAVA increases the state's responsibility for election administration in order to establish consistency across the state. Nonetheless, I realize the importance of our county election officials as they are charged with the conduct of elections. As we move forward to improve elections, I will continue to encourage coordination, cooperation, and collaboration between state and local officials.

Within this preliminary state plan, Montana encourages election accessibility for individuals with disabilities and those that speak other languages. We will continue to strive for integrity and accessibility in all aspects of the election process.

This plan is a living, breathing document. We will need to update and refine it as necessary over time, to reflect new election reforms. Overall, with funds appropriated by Congress, Montana is in a good position to meet the HAVA requirements. I welcome the challenges of HAVA and look forward to working with all Montanans to improve our elections.

Sincerely,

Bob Brown  
Secretary of State



**BOB BROWN**  
SECRETARY OF STATE  
STATE OF MONTANA

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**For immediate release**  
**January 24, 2003**

## **Brown Appoints Election Reform Advisory Committee**

Secretary of State Bob Brown has appointed 20 Montanans to help him implement the federal Help America Vote Act, which Congress passed last fall.

The advisory committee members come from throughout the state and represent several interest groups and government entities that will be affected by the act.

"The Help America Vote Act stems from one of the biggest election controversies in recent history - the 2000 presidential race," Brown said. "And it represents the biggest overhaul of the nation's election laws in recent history. I think it's important to involve the public in implementing something so fundamental and far-reaching."

Members of the committee are:

**Peggy Beltrone**, Cascade County commissioner, Great Falls

**Rita Blouke**, League of Women Voters, Helena

**The Rev. Phillip Caldwell**, Chairman, State Advisory Commission on Civil Rights, Great Falls

**John Collins**, Project Vote Smart, Anaconda

**Jean Corbett**, AARP, Helena

**Major Janet Creelman**, Installation voting officer, Malmstrom Air Force Base, Great Falls

**Jamie Doggett**, Meagher County commissioner, White Sulphur Springs

**Constance Enzweiler**, State coordinator, Americans with Disabilities Act, Helena

**Bernie Franks-Ongoy**, Montana Advocacy Program, Helena

**Cyndy Maxwell**, Big Horn County clerk and recorder, Hardin

**Rep. Bernie Olson**, House District 76, Lakeside

**Sen. Carolyn Squires**, Senate District 34, Missoula

**Ellen Swaney**, Director of American Indian Minority Achievement, Office of the Commissioner of Higher Education, Helena

**Betty Vantighem**, Montana Deaf and Hard of Hearing Services, Great Falls

**Myrle Tompkins**, Montana Association for the Blind, Helena

**Shelley Vance**, Gallatin County clerk and recorder, Bozeman

**Dr. Craig Wilson**, Professor of political science, MSU-Billings

**Justus Wendland**, Carroll College student, Helena

**Duane Winslow**, Yellowstone County clerk and recorder, Billings

**Vickie Zeier**, Missoula County clerk and recorder, Missoula

The Help America Vote Act calls for a congressional appropriation of \$3.9 billion over three years to overhaul elections in the United States. The money will go to state and local governments to replace antiquated voting machines and to improve election administration. Among other things the act calls for:

- Better access to polling places for disabled voters;
- Specialized voting equipment for disabled voters;
- Replacement of punch-card voting machines;
- Provisional voting; and
- Voting systems that allow voters to correct ballot errors.

A budget bill to pay the costs of the Help America Vote Act is pending in Congress.

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## **Help America Vote Act of 2002**

**Public Law 107-252 - October 29, 2002**

**(HAVA)**

SEC. 254. STATE PLAN.

(a) IN GENERAL. - The State plan shall contain a description of each of the following:

### **Section # 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.

### **Section # 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).

### **Section # 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.

### **Section # 4**

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

### **Section # 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.





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## **Section # 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.

## **Section # 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.

## **Section # 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.

## **Section # 9**

A description of the uniform, nondiscriminatory Statebased administrative complaint procedures in effect under section 402.

## **Section # 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.



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## **Section # 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).

## **Section # 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.

## **Section # 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.

## Section 1

**Sec 254. (a) IN GENERAL - The State plan shall contain a description of each of the following:**

**(1) How the State will use the requirements payment to meet the requirements of title III (*equipment and administration*), and, if applicable under section 251 (a)(2), to carry out other activities to improve the administration of elections. (Sec. 254, (a) (1))**

### *Recommended Language:*

#### **Section 301 Voting System Standards.**

Section 301 of the Help America Vote Act (HAVA) requires that voters have the opportunity, in a private and independent manner, to verify the votes they have selected, to change their ballot or correct any errors. It also requires election officials to notify the voter of the effect of selecting more than one candidate for a single office before a ballot is cast and counted. HAVA also directs states to adopt uniform and non-discriminatory standards that define what constitutes a vote, requires manual audit capacity and error rates standards of voting systems, and mandates access to the elections process by people with disabilities.

The state of Montana currently meets the private and independent provision for verifying votes, the opportunity for voters to change their ballot or correct any errors, and our voting systems preserve the privacy of the voter and confidentiality of the ballot (except for the visually impaired). These high standards will not waiver under HAVA.

The state currently has no system in place to check ballots before being cast. Since the vast majority of Montana's counties use a paper ballot and central count voting system, the state of Montana will embark on a statewide voter education project, which will include the following:

- All voter education materials will be made available to the public in multi-accessible formats.
- HAVA information will be available on the secretary of state's website.
- The secretary of state's office will work with tribal governments to meet the needs of Montana's Native American population.
- The secretary of state's office will work closely with the Montana Association of Counties (MACO) and the Montana Association of Clerk and Recorders in implementing HAVA.



- The state and counties will review and revise ballot materials and implement voter outreach programs with special emphasis on information to the specific voting systems to be used county to county.
- Voter Education information will be included in our Voter Information Pamphlet (VIP) that is mailed to each registered voter in the State who is on the active voter list, except that two or more voters with the same mailing address and the same last name may be counted as one voter. This will happen 30 days before an election.
- The state will consider sending a special mailing to every postal patron explaining the HAVA changes.
- Information will be posted in polling places notifying voters about the effects of casting multiple votes for a single office and how to correct a 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).

Most Montana voting systems produce a record with an audit capacity and the Secretary of State's Office will ensure any new systems have this ability. Under HAVA voting systems will produce a permanent paper record with a manual audit capacity and shall provide the voter with an opportunity to change the ballot or correct any error before the permanent record is produced. The paper record shall be available as an official record for any recount conducted with respect to any election in which the system is used. The State will guarantee this by drafting rules that require these provisions on a statewide level.

The state of Montana has 56 counties with 694 polling places covering 146,000 square miles. In the 2000 general election six Montana counties used punch-card voting systems (12 percent) and the remainder used optical scan voting systems (80 percent) and paper-ballot systems (8 percent). Under HAVA Montana will be replacing punch-card voting systems in five counties (one county replaced their system after the 2000 election).

With the passage of HAVA, the state is also required to purchase DRE units or other accessible systems for each established polling location. The state of Montana will work with surrounding states to see if we can establish a "buying pool" to purchase the required machines. Due to quantity price breaks the state of Montana plans to purchase all of its machines at the same time. In order to thoroughly test their compatibility with current systems, our goal is to order our machines early in 2004. The state of Montana will purchase each DRE unit complete with a combination carrying case/booth. The state will contract for 710 DREs in order to have a few extras for training and educational purposes.



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Purchasing 710 DREs and training staff on how to use and maintain the machines will require substantial funding. The vendor who is awarded the contract for the purchase of these machines will be required to provide training and technical support.

Public outreach/training will also be required to familiarize local elections staff, people with disabilities and the elderly about the new voting system. Montanans will be informed of the availability of these systems in each polling place through our educational efforts (done in accessible formats), through information at the polling place and in coordination with agencies that provide services for the disability community and the elderly.

The state of Montana will be purchasing the 710 DREs but the storage of the DREs will be the responsibility of each county. After initial training from the vendor, it will also be the responsibility of each county to enter into a maintenance agreement with a vendor.

Although the DREs will meet some of the accessibility for individuals with disabilities requirements under HAVA, they will not meet all of our state needs. Currently, the state of Montana has curb-side voting which includes taking a ballot to an elector with a mobility disability. This is done by the chief election judge who appoints two election judges who represent different political parties to take a ballot to an elector able to come to the premises where a polling place is located but unable to enter the polling place because of a disability. The elector may request assistance in marking his ballot as provided in state law. Most of our polling places meet ADA requirements for physical access. In addition, the state of Montana also allows absentee voting for **any** reason. Both of these conditions benefit people with disabilities. We will explore other options and opportunities to increase access for individuals with disabilities and access for the elderly.

Montana has met the requirements for alternative language accessibility by providing interpreters in two counties (Rosebud County and Big Horn County) that meet the federal requirements for such accessibility. We have no further alternative language requirements at this time.

Our error rates currently comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission. The state will continue to make sure the error rates are complied with under HAVA.

The Election Task Force Committee made up of county election officials and staff from the secretary of state's office has already begun work on rules to define "what constitutes a vote." This committee is also working on new Montana registration forms that meet HAVA requirements.

For those statutory and regulatory changes required, the secretary of state has successfully passed legislation to bring state terminology and procedures into conformance with HAVA. To that end, the 2003 Legislature passed House Bills 155, 190, 201 and 548 (copies of which are attached as

Attachment A).

HB 155 and HB 190 specifically deal with this section of the statewide plan.

HB 155 is legislation allowing counties to choose voting systems that have been approved by the secretary of state. It directs the secretary of state to adopt benchmark performance measures that must be met by any voting system before it can be approved. The bill sets the parameters for determining what constitutes a valid vote - the secretary of state is required to adopt rules in accordance with those parameters. The primary considerations in counting a vote are the voter's intent and the fact that rules governing vote counts are consistently applied. The bill also cleans up language in Title 13 (Montana's Election Law) that is inconsistent, outdated and confusing.

HB 190 establishes election reforms mandated by HAVA. HB 190 defines "legally registered voter" and "statewide voter registration list" and other terms. The bill identifies the secretary of state as the contact point for a statewide voter registration list. It also establishes the parameters for the voter registration database and information sharing agreements between the motor vehicle licensing database and the social security administration information database. Montana went the extra step in requiring every voter to provide a form of identification at the polling place when voting. Since the vast majority of our voters register by mail, the secretary of state's office did not want to further burden our elections officials by having them identify first time voters and ask them for identification. We feel our "everyone" provision will further meet the HAVA goals of providing a uniform and nondiscriminatory voting process. Our first time and transfer voters will not be treated differently.

### **Section 302: Provisional Voting and Voting Information Requirements**

HB 190, mentioned above, defines provisional voting and the procedures for casting provisional ballots. It also gives the secretary of state's office rule-making authority for provisional voting. The state of Montana now requires everyone to show proof of identification to vote. The ID can be a photo identification or a current utility bill, bank statement, paycheck, government check or other government document, that shows the name and address of the voter. All voters will be treated fairly and uniformly. Under the legislation, all voters who claim they are registered to vote are allowed to vote provisionally. The ballots will be handled separately and later verified. Once our rules are written and adopted, the county election administrator will be able to use the statewide voter database to verify provisional voters. It is then up to the county election administrator to inform the voter whether or not their vote counted and to provide access to that information on an expedited basis to the proactive provisional voter who contacts the county election official. The method of notifying the provisional voter will be up to the county's discretion but must comply with the rules adopted by the secretary of state.

The state will develop informational posters and flyers for polling locations to include the following:

- How to cast a vote
- How to cast a provisional ballot
- Instructions for mail-in registrants
- The ID requirement for all voters
- General information on voting rights/provisional balloting and general information on federal and state laws.

A pamphlet will also be developed to hand out to provisional voters explaining their rights and responsibilities.

### **Section 303: Computerized Statewide Voter Registration List**

Section 303 of HAVA requires states to implement a "single, uniform, official, centralized, interactive, computerized statewide voter registration list that is defined, maintained, and administered at the state level." The list must contain the name and registration information of every legally registered voter in the state and must assign a unique identifier to each voter in the state.

Montana currently has a central database but not all of the information required under HAVA is in our database. In addition, official voter registration records are created and maintained at the county level. Each county election official updates and separately maintains voter registration records. Software and vendors differ from county to county.

Montana will establish a single, statewide voter management system with integrated election management capabilities for all 56 counties and the secretary of state's office. The needed legislation has already been passed by Montana's 2003 Legislature (in HB 190) that will greatly enhance our ability to establish the statewide management system.

The state of Montana will issue an RFP for a vendor to develop or enhance current existing systems for the statewide voter management system. The RFP will include training for elections officials on how to use the system as well as an extensive maintenance contract. The Montana secretary of state's office is highly sensitive to making sure we contract with a competent vendor who will help us through the process for the long haul.

The state of Montana will use requirements payments to the extent possible to accomplish this goal. Payments may be used for software, hardware for the statewide management system, hardware for local election officials to run the system, and connectivity between the counties and the state. Montana's statewide voter management system will contain the following:





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- The voter system will be a centrally administered election management system maintained and administered by the Office of the Secretary of State which will interact with commercial election management systems (EMS) operating at the county level. The new system, under HAVA law, needs to replace current diverse county management systems.
- The system will ensure that names and registration information of every validly registered voter appear on the state's computerized list and will ensure, in coordination with county election officials, that only voters validly registered on the state list will be eligible to vote.
- The system will allow any election official in the state to obtain information contained in the computerized list and to update the registration information related to voters residing in their jurisdiction.
- The system will allow voter registration information obtained by any election official to be entered into the state computerized list on an expedited basis. Duplicate voter records and verification of driver's license numbers or the last four digits of social security numbers will be identified on an expedited basis as well.
- The system will authenticate new registration applications, using the driver's license number or last four digits of the social security number in coordination with the Department of Justice's Motor Vehicle Division. In addition, the system will provide for on-going verification of valid registrations by coordinating with computerized lists provided by the Department of Corrections to remove incarcerated felons, and computerized lists provided by the Department Public Health and Human Services to remove deceased voters.
- The system will ensure that invalid registrations are removed in a timely manner. (i.e., the system will prevent or remove "moved out of state," duplicate, deceased, and incarcerated felon registrations from voter lists.)
- The system will assign a unique voter identifier number to each registered voter.
- The system will track and report changes made to voter records, as well as the voting history for each voter.
- The system will verify voter status to differentiate between active, inactive, canceled/suspended, and pending registrations.
- The system will track statistical data about voter registration activity at the state, county and precinct level including statistics required by the National Voter Registration Act of 1993.
- The system will provide adequate technological security measures to prevent unauthorized access to the system and the computerized voter list.
- The system will be implemented through a partnership between the counties, the Technical Advisory Committee and the secretary of state.
- The system will be designed around applicable state laws.





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### **Section 303 (b): Requirements for Voters Who Register by Mail**

This section of HAVA includes new identification requirements for voters who register by mail and who have not previously voted in an election for federal office. These requirements took effect January 1, 2003. As part of the mandate, states must develop new voter registration forms that include:

- The question, "Are you a citizen of the United States of America?"
- The question, "Will you be 18 years of age on or before election day?"
- The statement, "If you check 'no' in response to either of these questions, do not complete this form."
- A statement informing the individual that if the form is submitted by mail, the individual is required to submit their driver's license number; or the last four digits of their social security number if they do not have a driver's license. Identification will be required at the poll and can include a valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

### ***Recommended Language***

The Montana secretary of state's office has been given rule-making authority to meet these requirements. Our office along with the Election Task Force Committee has created a new voter registration card to reflect the needed changes and will create a process for ensuring registration and voting are handled properly under the new law. Identification will be required of all voters in Montana.

## **Section 2**

**Sec 254. (a) IN GENERAL -** The State plan shall contain a description of each of the following:

**(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).**

### ***Recommended Language***

The secretary of state's office will manage the activities and projects funded by the HAVA requirements payments. The state will be responsible for accounting of all expenditures, funding levels, program controls and outcomes in accordance with state and federal laws.

Funds will be distributed based on availability and set to the priorities established in this state plan. The secretary of state will use the funds to buy out punch card systems, buy DREs, establish a statewide voter election management system and carry out educational efforts. The state and/or counties will be responsible for the five percent match. If the available funds do not cover the costs of the DREs, management system and educational efforts, the state may consider a proportionate distribution of funds based on the number of polling places and registered voters. If we need to distribute funds proportionately, county voter registration statistics at the time of the 2002 General Election will be taken into consideration for proportionate distribution of any funds to counties.

Counties will submit to the secretary of state the portion of their county budgets that contain the 2000 election cycle maintenance of effort to establish baseline amounts for efforts already in place. All expenditures beyond the maintenance of effort will be coordinated with statewide efforts to be eligible for reimbursement of such efforts.

The explicit method of funding is described in section 6 (State's Proposed Budget). In general, the state will use the funds at the statewide level with as little cost, if any, to counties. The state has established a federal special revenue account to the credit of the secretary of state for money received under HAVA (HB 548). Funds will be spent in accordance with state and federal law and will come directly from this account.

The state may revise the state plan, using the procedures identified in section 11, to adjust the budget at any time.

The performance measures detailed in section 8 of this State Plan will be used to monitor compliance with the mandate of the Act. When the deadlines have passed, the secretary of state will produce a report on how the performance goals have been met.

## **Section 3**

**Sec 254. STATE PLAN (a) IN GENERAL - The State plan shall contain a description of each of the following:**

**(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.**

***Recommended Language***

- Poll workers and elections officers will be kept abreast of changes in the law, including new laws. To maintain uniformity, the secretary of state will offer continuing education programs to election officials.
- Workshops will be provided at conventions and election information will be mailed or distributed in a timely manner. Workshops will cover the areas of voting system requirements, statewide voter management system requirements, methods of poll worker training, election recounts, accessibility for individuals with disabilities and alternative language requirements.
- The Election Judges Handbook will be updated to include HAVA information - with emphasis on implementing poll worker training and public display of HAVA information requirements at each polling place. A training video will be considered to help with these educational requirements.
- Marketing at county fairs and regional shows and will add marketing items to inform the public of the changes under HAVA. In addition, we will make presentations to students at the high school and collegiate level.
- The secretary of state's office will work with organizations that serve low-income and homeless Montanans to get the word out.
- The secretary of state's office will consider a contract with the Montana Historical Society to develop a history "trunk" on the history of elections including the historic changes under HAVA that can be used in our presentations to civic groups and schools.
- The secretary of state's office will consider working with the Office of Public Instruction and school boards on an election training module for high schools.
- The secretary of state's office will continue to use our website as an effective and efficient way to disseminate election information.
- The secretary of state's office will consider inserts in utility bills as a way of getting the word out about the HAVA changes.

- The secretary of state's office will adopt voter education guidelines to inform voters that if they fail to cast a vote for a candidate or issue, the voter will not be notified of the undervote but may correct their ballot.
- The secretary of state's office plans on making presentations to local county commissioners and all other interested parties about the statewide plan and changes under HAVA.

The secretary of state will use public service announcements as a way to inform voters of their rights and responsibilities under HAVA. These announcements will be in audio or video format.

The secretary of state will consider taking out newspaper and magazine ads regarding the HAVA implementation.

The secretary of state's office will prepare Media Kits for Montana media to use when reporting on all of the activities surrounding the implementation of HAVA. The secretary of state will also actively conduct interviews, write letters to the editor and prepare press releases to inform the public about the HAVA implementation process.

The secretary of state will consider providing grants to entities to aid us with our educational efforts on a nonpartisan basis.

The secretary of state will consider sending a flyer/letter to every postal patron in Montana explaining the requirements of HAVA and state law.

The secretary of state will provide HAVA information in our Voter Information Pamphlet (VIP) at least 30 days before the election.

## **Section 4**

**Sec 254. (a) IN GENERAL - The State plan shall contain a description of each of the following:**

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

### ***Recommended Language***

The state of Montana currently meets most of the voting system requirements required under HAVA as outlined on the first three pages of the attached table (Attachment B). For those areas that we do not meet, the secretary of state has passed legislation to grant us rule-making authority

to make the necessary changes/updates (Attachement A). As the state implements a new voting system, we will maintain the current procedure and create new procedures, guidelines and processes as necessary.

In addition the state must provide DREs for every polling place and adopt language on what constitutes a vote.

## **Section 5**

**Sec. 254 (a) IN GENERAL - The State plan shall contain a description of each of the following:**

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

### ***Recommended Language***

House Bill 548 passed by the 2003 Legislature and signed into law by the governor creates a federal special revenue account to the credit of the secretary of state (Attachment A). The secretary of state shall be the single signing authority for administration of these funds, in compliance with HAVA. There is no appropriation identified with this legislation. It simply creates a mechanism to receive money. Funds will be spent in accordance with state and federal law.

## **Section 6**

**Sec. 254 (a) IN GENERAL - The State plan shall contain a description of each of the following:**

**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.**

### ***Recommended Language***

The state of Montana's proposed budget appropriation, subject to full federal funding of the Help America Vote Act of 2002 (HAVA), includes the appropriations to fund programs to conform to the requirements of Title III. Montana has already received its "small state minimum" payment of \$5 million which is not subject to a 5 percent match. We currently expect additional payments of \$4.1 million under HAVA which will require a 5 percent match of \$205,000. **Subject to complete federal funding of HAVA, our current budget figures will be based on a total budget of \$9,305,000.**

### **Voting Accessibility**

Montana will be replacing voting systems in counties where punch card systems were used in the 2000 general election. There are five counties in the state requiring new voting systems (one county replaced punch card systems after the 2000 election and will be reimbursed). The secretary of state will lead a statewide procurement effort to acquire these systems. The secretary of state will work with county election officials to ensure that all needs are met, including but not limited to:

- device acquisition;
- system maintenance;
- election preparation services; and
- election tabulation services.

The secretary of state will act as contract administrator to maximize the purchasing power. The counties will own, operate, and work with the vendor to maintain the new voting systems and will retain control of election services at the county level. Eligibility to participate in complete voting system replacement and to receive funds from the state election fund will require participating counties to:

- have operated punch card systems in the 2000 general election; and
- agree to have the state purchase replacement systems on their behalf.

Our estimated total cost to replace our punch card voting systems is approximately **\$350,000.**

The next budgetary item will include the purchase of 710 Direct Recording Electronic (DRE) devices *or other voting system equipped for individuals with disabilities* at each polling place to meet the accessibility requirements of Title III. We estimate the cost of this portion to be **\$2.8 million.**

### **Provisional Balloting**

Provisional Balloting by this term is something new for Montana. Montana had a challenge voting



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process before the enactment of HB 190. The requirement to build a free access system for the voter to determine the status of their provisional ballot is a new requirement that carries a cost with it. At this time, the secretary of state envisions this function as one that requires the state to develop rules and processes for counties to follow. However, we view the costs associated with this function to be the responsibility of the counties. Counties, within the statewide rules adopted, may choose the form in which they will provide access to their provisional voters. The counties will use the statewide voter management system to verify the status of provisional voters.

### **Voter Education, Election Official and Poll Worker Training**

Some voter education is already a responsibility, and included in the maintenance of effort, of the secretary of state and county election officials. However, HAVA is going to require extensive educational efforts at the state and local level in a state as rural and large as Montana. Additional voter education will be funded at a rate of up to 10 percent of the state election fund. These funds will be used for various projects on a local and statewide level. **The total for this component is approximately \$930,500.**

### **Statewide Voter Management System**

The secretary of state will implement a statewide voter management system to comply with HAVA Title III. The state of Montana will be applying for a waiver to have the system up and running by January 1, 2006. Working with county election officials and state information technology officials, the secretary of state will define functional requirements, roles and responsibilities of carrying out the functions of voter registration within the principles that the:

- Secretary of state shall acquire, maintain and support the statewide system;
- Counties will remain responsible for the operations of voter registration, including but not limited to: voter registration information maintenance, borders and boundaries of jurisdictions, poll resource management, local registration list information, and candidate registration for local contests;
- Counties will remain responsible for furnishing lists, reports, and other printing requirements, however the state will consider entering into a statewide contract to maximize purchasing power;
- Official voter registration list will remain under the central control of the secretary of state;
- Secretary of state will make the registration list available by request for a reasonable fee;
- Counties will be responsible for voter registration operations, printing, and legal requirements for supporting the statewide system as well as storage of voting systems;
- Counties and the state will initially maintain the statewide system with HAVA funds; counties will eventually be responsible for on-going maintenance costs.

The state of Montana will fund the management system program including software, hardware and initial maintenance. **We estimate the cost to be 35 percent of our total monies for a figure of**

**\$3,256,750.**

#### **Precinct Counters Matching Funds**

The state of Montana will be looking at a matching grants program to help counties with the purchase of precinct counters to aid in the HAVA requirements for under-voting and over-voting. These grants would be based on registered voters and would involve a direct county match. **We estimate the cost to be up to 6 percent of our total monies for a figure of \$558,300.**

#### **Administration costs**

To fulfill the requirements of Title III, the secretary of state will have to provide for the coordination, planning, operations and reporting on these programs. The secretary of state will use funds to administer the implementation of HAVA above the current maintenance effort for elections. **Montana will use its match money (\$205,500) to pay for administrative costs and will consider using additional HAVA funds for administrative costs if needed.**

#### **Maintenance of Systems and the "What-Ifs"**

Because HAVA money is "no year" money we plan on retaining some funds to take care of future year maintenance and systems replacement. Any money left over from the budgeted items above will be set aside for these purposes.

#### **BUDGET BREAKDOWN:**

**Voting Accessibility: \$3,150,000**

**Voter Education, Election Official and Poll Worker Training: \$930,500**

**Statewide Voter Management System: \$3,256,750**

**Precinct Counter Matching Funds: \$558,300**

**Administration Costs: \$205,500 (matching funds)**

**TOTAL ESTIMATED BUDGET EXPENSES: \$8,101,050**

**MONEY TO BE LEFT IN ACCOUNT (for future needs): \$1,203,950**

## **Section 7**

**Sec. 254 (a) IN GENERAL -The State plan shall contain a description of each of the following:**

**(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.

### ***Recommended Language***

The secretary of state will maintain expenditures of the state for activities funded by the payment at a level equal to or greater than the level of such expenditures in state FY 2000.

The secretary of state and counties shall continue to provide maintenance of effort, as required in the Help America Vote Act of 2002 (HAVA), in providing election and voter education.

## **Section 8**

**Sec. 254 (a) IN GENERAL - The State plan shall contain a description of each of the following:**

**(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.**

### ***Recommended Language***

The secretary of state is responsible for ensuring the success in meeting each performance goal. Each county election official has a substantial responsibility in meeting performance goals by monitoring performance measures and reporting to the state at a time to be determined. The reporting will occur after the deadline for implementation of each HAVA requirement has passed.

When the deadlines have passed, the secretary of state in cooperation with the counties will produce a report on how performance goals have been met. The report will include specific data to disclose the successes and failures of counties in the implementation of the Help America Vote Act of 2002 (HAVA). The secretary of state will compile the data in the reports and create a statewide report on the programs. The report will include an indication of whether each county met the performance goals and where improvements can be made.

The performance goals are as follows:

**Performance Goal 1: Elimination of punch card voting machines.**

Eliminating punch card voting machines requires two things once the appropriate funds are available: 1) development by the secretary of state of a statewide Request for Proposal (RFP) to contract for replacement voting systems with successful award of contracts, and 2) requisition and use by counties of alternative voting systems under the contracts. The measure of success for both elements is the successful replacement of all punch card voting machines by the 2004 Federal election.

Performance measure 1	Number of counties using punch card voting machines in the 2004 Federal election
Timetable	January 1, 2003 to Federal election 2004
Description of the criteria used to measure performance	Six Montana counties had qualifying precincts in the 2000 Federal election according to HAVA descriptions of replacement voting systems.
Process used to develop the criteria	Success of meeting the performance goal will be based upon the number of punch card voting systems still in use by the Federal election 2004.
Description of official to be held responsible for ensuring each performance goal is met	While each county election official is responsible for implementing the replacement voting system in their county, the secretary of state is leading the statewide effort for replacement and is therefore ultimately responsible for meeting this performance measure.

**Performance Goal 2: Voting Accessibility**

In addition to assisting counties in assuring the elections process is in compliance with the American's with Disabilities Act, the secretary of state is committed to improving voting accessibility. As required by HAVA, this shall include accessibility for individuals with disabilities and alternative language accessibility as determined in Title III, Section 301 of HAVA, this will be accomplished by the secretary of state and county election officials in two steps once the appropriate funds are available: 1) development by the secretary of state of a statewide Request for Proposal (RFP) to contract for DREs and/or addendum voting system devices with successful award of contracts, and 2) requisition and use by counties of DRE's and/or addendum voting system devices under the contracts. The measure of success for both elements is the successful acquisition and deployment of accessible voting machines by the 2006 Federal election.

Performance measure 2	Compliance of counties using voting accessible compliant devices in the 2006 Federal election
Timetable	January 1, 2003 to Federal election 2006
Description of the criteria used to measure performance	All 56 Montana counties will require alternative voting accessibility devices in the 2006 Federal election according to HAVA. Two counties need alternative language voting accessibility.
Process used to develop the criteria	Success of meeting the performance goal will be based upon the number of counties using voting accessible devices and their frequency of use in the Federal election 2006.



Description of official to be held responsible for ensuring each performance goal is met	While each county election official is responsible for implementing the voting system in their county, the secretary of state is leading the statewide effort for acquisition and is therefore ultimately responsible for meeting this performance measure.
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### Performance Goal 3: Centralized Statewide Voter Management System

The state will have a centralized statewide voter management system operational by January 1, 2006 (Montana will be applying for a waiver to have the later deadline). The development of the central statewide voter management system is a new system of online voter registration and updates via online driver license renewal and address changes. The goal is to meet the requirements of HAVA, but also enhance the activities of the county election officials and the experience of the voter.

Performance measure 3a and b	a) Implementation of a "single, uniform, official, centralized, interactive, computerized statewide voter registration list that is defined, maintained, and administered at the state level." b) Number of counties with procedures in place to update the centralized voter registration database using the scale: 0 - Not updating 1 - updating on weekly batch mode 2 - updating on daily batch mode 3 - updating upon new information (batch mode) 4 - updating real-time 5 - using the management system for all voter registration processing
Timetable	January 1, 2003 to January 1, 2006
Description of the criteria used to measure performance	a) Having a system that is operational at the secretary of state's office b) Participation is measured on the scale of interaction, whereas a county that does not participate causes the score to be significantly low. Higher degrees of interaction result in higher scores on performance.
Process used to develop the criteria	a) System needs to be up and running by January 1, 2006 to meet HAVA requirement. b) Once developed the success of the system will be dependent upon the actual usage of the system.
Description of official to be held responsible for ensuring each performance goal is met	The secretary of state is responsible for implementing the statewide voter management system and coordinating the efforts of all 56 county election officials to meet this performance measure.

### Performance Goal 4: Provisional Ballots

There are many requirements for provisional balloting in HAVA that need measuring: provisional ballot uniform processing, verification, and status availability. Our goal is to have the secretary of state's centralized voter management system designed to allow counties to verify provisional voter status to determine whether a vote should count or not. The goal is to have the uniform procedures in place, have each county in compliance and have the statewide system reporting back status of the provisional ballots. Data gathered on provisional balloting will be used to identify and remove barriers that result in uncounted provisional ballots.



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Performance measure 4	<p>With respect to the voter registration of each county, the following information will be collected to measure compliance performance:</p> <ul style="list-style-type: none"> <li>• The number of provisional ballots in each precinct</li> <li>• The number of voters in each precinct</li> <li>• The number of provisional ballots that were verified and counted in each precinct</li> <li>• The number of provisional ballots not counted in each precinct and the reason for not counting</li> <li>• Whether each voter was notified of the status of their ballot</li> <li>• Whether the uniform procedures were followed for determining whether a provisional ballot is counted or not counted</li> </ul>
Timetable	December 31, 2004
Description of the criteria used to measure performance	<p>The data in the report will provide specific information relating to how many provisional ballots are voted and provide a means for verifying the procedures for establishing whether the ballots are counted.</p> <p>HAVA requires uniform procedures for checking and verifying provisional ballots. The data in the report will provide specific information for the secretary of state to determine the success of implementation.</p>
Process used to develop the criteria	The secretary of state is in the process of making needed changes in our rules regarding provisional balloting.
Description of official to be held responsible for ensuring each performance goal is met	County election officials are responsible for provisional ballot verification and compliance to procedures established by the state. Therefore the secretary of state is responsible for establishing the procedures, compliance requirements, reporting requirements and ultimately the success of this performance measure.

#### **Performance Goal 5: Voter Education, Election Official and Poll Worker Training**

The goal of education and training is to lower the incidence of mistakes and lack of understanding. Measuring the success of such activities is subjective and difficult to analyze. The secretary of state will be looking at a lot of variables to determine our success in this arena.

Performance measure 5	<p>With respect to the voter registration of each county, the following information will be looked at to measure performance (these measures are not in any order and may or may not imply success in and of themselves):</p> <ul style="list-style-type: none"> <li>• Voter turnout - including absentee and provisional</li> <li>• Number of public service announcements</li> <li>• Number of seminars providing voter education</li> <li>• Number of locations where voting equipment is on public display</li> <li>• Number of voter education and voter outreach initiatives</li> <li>• A comparison of voter turnout in a federal election with the voter turnout in the immediately preceding four-year cycle</li> <li>• Actual posting of voter information materials at each polling place</li> <li>• Annual questionnaire to determine how aware the public is of their voting rights and responsibilities</li> </ul>
Timetable	January 1, 2004

Description of the criteria used to measure performance	The information will summarize the voter outreach and voter education methods employed by each county and state.
Process used to develop the criteria	The state and counties already provide voter education. By the 2004 Federal election, additional steps will be taken to ensure voter knowledge of changes in voter registration and voting caused by this act. The counties will include details of their efforts in the report they file with the secretary of state certifying their election results and process. Success will be measured in terms of how smoothly the election goes given all the changes.
Description of official to be held responsible for ensuring each performance goal is met	The secretary of state and the county elections officials are all responsible for ensuring the success of voter education; however, the secretary of state is responsible for the success of all statewide coordinated efforts for voter education.

## Section 9

**Sec. 254 (a) IN GENERAL - The State plan shall contain a description of each of the following:**

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

### *Recommended Language*

The secretary of state will adopt a State-Based Administrative Complaint Procedure consistent with the requirements of HAVA in Montana Administrative Rules. Following publishing the preliminary version of the State Plan for the required public comment period, the secretary of state will move forward with adopting the administrative rules outlining the State-Based Administrative Complaint Procedure. This procedure will be published and distributed to all 56 county election officials and posted on the secretary of state's website.

Elements of the State-Based Administrative Complaint Procedure will include the requirements of HAVA under SEC 402 (a) (2) (A)-(I).

- A) The procedures shall be uniform and nondiscriminatory.
- B) Under the procedures, any person who believes that there is a violation of any provision of title III (including a violation which has occurred, is occurring, or is about to occur) may file a complaint.
- C) Any complaint filed under the procedures shall be in writing and notarized, and signed and sworn by the person filing the complaint.



- D) The State may consolidate complaints filed under subparagraph (B).
- E) At the request of the complainant, there shall be a hearing on the record.
- F) If, under the procedures, the State determines that there is a violation of any provision of title III, the State shall provide the appropriate remedy.
- G) If, under the procedures, the State determines that there is no violation, the State shall dismiss the complaint and publish the results of the procedures.
- H) The State shall make a final determination with respect to a complaint prior to the expiration of the 90-day period which begins on the date the complaint is filed, unless the complainant consents to a longer period for making such a determination.
- I) If the State fails to meet the deadline applicable under subparagraph (H), the complaint shall be resolved within 60 days under alternative dispute resolution procedures established for purposes of this section. The record and other materials from any proceedings conducted under the complaint procedures established under this section shall be made available for use under the alternative dispute resolution procedures.

In addition to the new complaint procedure, Montanans maintain their right to access the court through independent judicial review.

## **Section 10**

**Sec. 254 (a) IN GENERAL -The State plan shall contain a description of each of the following:**

**(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.**

### ***Recommended Language***

Pursuant to the Act and in anticipation of receiving full funding for Title I, money will be distributed to provide for punch card replacement for each county that was using a punch card voting system in the 2000 general election. Section 6 details how the federal funds will be spent to meet the requirements of Section 301 of the Help America Vote Act of 2002 (HAVA).

There are five counties in the state that will require new voting systems (one additional county that will be reimbursed). The secretary of state will lead a statewide procurement effort to acquire these systems. The secretary of state will work with county election officials to ensure that all needs are met, including but not limited to:

- device acquisition;
- system maintenance;
- election preparation services; and
- election tabulation services.

The secretary of state will act as contract administrator to maximize the purchasing power. The counties will own, operate, and work with the vendor to maintain the new voting systems and retain control of election services at the county level.

The secretary of state will implement a statewide voter management system to comply with the HAVA Title III. Working with the county election officials and state officials, the state will define functional requirements, and roles and responsibilities of carrying out the functions of voter registration. The system will serve as the single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level. This is a priority of the state's activities that is second only to the removal of all punch card systems. Should any Title I funds remain after the replacement of punch card systems, those funds may be allocated to other priorities as described in section 6.

## **Section 11**

**Sec. 254 (a) IN GENERAL - The State plan shall contain a description of each of the following:**  
**(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).**

### ***Recommended Language***

- The secretary of state shall conduct annual meetings with county elections officials to review standards and assess the goals and objectives of the HAVA State Plan.
- If the secretary of state determines the State Plan requires material change, the secretary of state shall:
  1. propose the recommended changes within 60 days of the annual meeting;
  2. allow for public comment not less than 30 days; and
  3. publish in the federal register upon submitting the revised plan to the Election Assistance Commission.



## Section 12

**Sec. 254 (a) IN GENERAL - The State plan shall contain a description of each of the following:**

**(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.**

This State Plan is the Preliminary State Plan required under the Help America Vote Act of 2002 (HAVA). This section will be updated in the next fiscal year, reflecting changes to the State Plan, as well as a summary of the 2003 successes.

## Section 13

**Sec. 254 (a) IN GENERAL - The State plan shall contain a description of each of the following:**

**(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.**

### *Recommended Language*

Pursuant to Section 255, on January 24, 2003, the chief state election official, Bob Brown, Montana Secretary of State, appointed a citizen advisory committee to help in the development of the State Plan (see press release page 4). The citizen advisory committee was named the Montana Election Reform Advisory Committee. Pursuant to Section 255 of the Help America Vote Act of 2002 (HAVA), the committee included the chief state election official, the election officials from the two most populous jurisdictions, other local election officials, stake holders and citizens. Secretary Brown made committee appointments including a cross-section of people throughout Montana, with representation of groups of individuals with disabilities and minority representation.

The State Planning Committee held open public meetings in compliance with the *Open Meeting Laws of the State of Montana* on April 14 and May 20, 2003. On June 2, 2003, the "preliminary" State Plan will be posted on the secretary of state's website and be made available for public review and comment for a period of 30 days. The secretary of state will announce through a statewide press release after June 2, 2003, the locations where the preliminary State Plan is available for public review and comment. Various media outlets will be requested to publish the preliminary State Plan and/or announce its availability as a public service announcement.

Montana Election Reform Advisory Committee Membership list:

<b>MEMBER NAME</b>	<b>OFFICE / REPRESENTING</b>
Peggy Beltrone	Cascade County Commissioner, Great Falls
Rita Blouke	League of Women Voters, Helena
Bob Brown	Montana Secretary of State
Rev. Philip Caldwell	State Advisory Commission on Civil Rights, Great Falls
John Collins	Project Vote Smart, Anaconda
Jean Corbett	AARP, Helena
Jamie Doggett	Meagher County Commissioner, White Sulphur Springs
Constance Enzweiler	State Coordinator, Americans with Disabilities Act, Helena
Bernie Franks-Ongoy	Montana Advocacy Program, Helena
Major Daniel Keder	Installation Voting Officer, Malmstrom Air Force Base, Great Falls
Rep. Bernie Olson	House District 76, Lakeside
Sen. Carolyn Squires	Senate District 34, Missoula
Ellen Swaney	Director of American Indian Minority Achievement, Helena
Betty Vantighem	Montana Deaf and Hard of Hearing Services, Great Falls
Myrle Tompkins	Montana Association for the Blind, Helena
Shelley Vance	Gallatin County Clerk and Recorder, Bozeman
Dr. Craig Wilson	Professor of political science, MSU-Billings
Justus Wendland	Carroll College Student, Helena
Duane Winslow	Yellowstone County Election Administrator, Billings
Vickie Zeier	Missoula County Clerk and Recorder, Missoula



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# APPENDIX A



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# APPENDIX B