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FROM: Pat Murray, Deputy Counsel

TO: County Board Commissioners

RE: Summary of Federal Legislation: Help America Vote Act of 2002

DATE: 28 January 2003

The attached is a summary of the major provisions of the Help America Vote Act of 2002. I've attempted to prioritize the provisions, with the most immediate obligations being the first ones summarized. All the provisions and requirements apply to federal elections only. Some of the highlights:

*A new registration form by January 1, 2003.

*Mail registrants will have to submit additional documentation beginning January, 2003.

*Boards must assign unique identifiers to all voters, and those voting for the first time, and who registered by mail without providing documentation, must produce identification at the polls, beginning January 1, 2004.

*There must be a statewide, interactive computerized registration list, by January, 2004.

*Voting systems must allow all voters, including those with disabilities, to vote independently and privately, by January 1, 2006.

REQUIREMENTS OF STATE PLAN

- Developed by a committee, pulled together by the State Chief Election Officer, and comprised of election officials from the two most populous jurisdictions, other local election officials, stakeholders, including representatives of various disabilities communities, and such other representatives as Chief Election Officer determines.
- Once developed, plan must be published in the Federal Register for the requisite comment period, [45 days], and the final plan must take into account comments received.
- Plan must include the following information:
 - how state plans to meet requirements of Title III using payments under this Act;
 - description of criteria for determining which localities are eligible to receive payments and methods for measuring performance/compliance;
 - plan for voter education, election official training/education, recruitment & training of poll workers;
 - guidelines & processes for selecting voting equipment meeting Title III requirements;
 - budget, including the establishment of a dedicated fund for managing payments under this Act for meeting Title III requirements; and,
 - whatever other certifications and information the newly created Commission requires, including certification that the plan developed according to the provisions of this Act and that the state is otherwise in compliance with this Act and all other federal laws relating to the administration of elections.
- Although no deadline given, an apparent earliest date is 6 months after enactment of the law as that is when the state must notify the Commission that it intends to use monies under the provisions of the Act.

TITLE III: UNIFORM & NONDISCRIMINATORY ELECTION TECHNOLOGY & ADMINISTRATION REQUIREMENTS

- Defines voting system as the total combination of mechanical, electromechanical, or electronic equipment used to define ballots, cast and count votes, report/display results,

maintain and produce audit trail information, and all practices, procedures and documentation used to identify and test system components, maintenance records, including records of defects & errors, and used to produce materials for the voters, including, but not limited to notices, ballots, instructions & forms.

- By January 1, 2006, **all** voting systems must:
 - allow every voter, including voters with disabilities, [including visual disabilities], to vote independently and privately;
 - allow voter to change ballot and correct errors before vote is cast & counted;
 - notify voter of any overvote, the effect of such overvote, and allow them to make corrections before vote is cast & counted;
 - produce a paper record with audit capacity, that shall become an official record for recount/re canvass purposes; and,
 - provide alternate language access for voters with limited English proficiency, pursuant to Voting Rights Act of 1965, as amended.
- By January 1, 2004, **all** states must:
 - provide for provisional voting for voters whose names are not on the records when they go to the polls to vote [NYS affidavit ballots, EL§8-302(3)(e)]; for the prompt verification of the information in order to determine if the ballot can be cast & counted, and notification to the voter of the final decision and the reasons therefor; [EL§9-209(2);§5-403] ;
 - on election day, post in every polling place, notices with sample ballot, instructions on use of the voting machines, date and hours of voting, instructions for first-time voters who registered by mail, general information on fraud & misrepresentation, and general information on voting rights under federal & state laws; and,
 - adopt uniform definition of what constitutes a vote that will be counted for every category/type of voting machine used in the state.
- By January 1, 2004, **all** states must establish a **central, statewide, computerized**, voter registration list which:

- contains the **name and address** of **every** legally registered voter in the state, and assigns a unique identifier to each such voter; the identifier shall be either the voter's driver's license number, the last four digits of their social security number, or, if the voter has neither a driver's license nor a social security number, another number automatically assigned by the system;
 - serves as the single, official system for maintaining voter list;
 - can be immediately accessed by local election officials to electronically add or remove voters;
 - removal must be in accordance with NVRA, and shall be coordinated with other agency databases in the state to facilitate removal of felons and deceased persons and other ineligible voters pursuant to state law;
 - shall be maintained and supported by the Chief Election Officer of the state; and,
 - shall be inaccessible to unauthorized persons.
- The appropriate state or local official shall provide security to bar unauthorized access to the list and to assure that eligible voters are not wrongfully removed.
 - By January 1, 2004, all states must adopt registration application forms and/or procedures which require:
 - each applicant to answer whether the person is a citizen and will be 18 years on or before election day; and the form must contain an instruction to not complete the form if the answer to either question is 'no';
 - each application form must include a space for the applicant to provide either their driver's license number or the last four digits of their social security number;
 - each application form must provide information about the required identification documentation, and the consequences of failing to provide same when person votes for the first time;
 - every applicant, registering by mail, to provide proof of identity in the form of a current photo id or a copy of a utility bill, paycheck, government check, bank statement or government document showing the name and address of the voter;
 - procedures which allow the head of the state motor vehicles department to verify

social security numbers, names, dates of birth for a voter with the Commissioner of Social Services;

- first-time voters who registered by mail, to present identification at the polls, either a current photo id or a copy of a utility bill, paycheck, government check, bank statement or government document showing the name and address of the voter; if the first-time voter presented such identification when they registered, then they do not have to present any at the polls; if the first-time voter registered at an NVRA agency and presented current photo id, a copy of a utility bill, paycheck, government check, bank statement or government document showing the name and address of the voter OR a driver's license number or the last 4 digits of a social security number, which can be verified, then they do not have to present id at the polls;

- first-time voters who cannot meet the identification requirements must vote a provisional ballot at the polls;

- first-time voters who vote by mail must submit with their ballot a copy of a current photo id or a copy of a utility bill, paycheck, government check, bank statement or government document showing the name and address of the voter;

- first-time voters who do not meet the identification requirements will have their ballots treated as provisional ballots, subject to verification before they can be counted; first-time voters who are voting pursuant to Uniform Overseas Citizens Absentee Voting Act, [includes military and special federal voters] or the Voting Accessibility for the Elderly and Handicapped Act, [provisions for permanently disabled voters], do not have to meet these identification requirements; and,

- registrars to provide voters an opportunity to complete incomplete forms in a manner that will allow completion of registration in time for the next federal election, subject to provisions of state law [EL§5-210(7)(8)]

TITLE I: PAYMENTS TO STATES FOR ELECTION ADMINISTRATION IMPROVEMENTS
AND REPLACEMENT OF PUNCH CARD AND LEVER MACHINES

- General Services Administration, (GSA) has 45 days from enactment of legislation to create payment program; chief executive officer of state, or his/her designee, then has 6 months to notify GSA of intent to apply for funds under this Title; notification must be in conjunction or consultation with state's Chief Election Officer and include certification that payment used only for costs incurred after November 1, 2001; that the state is in compliance with the statutes listed in the next bullet; that replacement/improvement will be accomplished by federal elections of 2004; and such other information as GSA requires.
- If a statutory change is required before state can meet all requirements, they must still make certification within the initial 6 months and make an additional certification when the required legislation is enacted.
- All payments must be used in a manner that is consistent with the Voting Rights Act of 1965, as amended, including pre-clearance requirements, the NVRA, the Voting Accessibility for the Elderly & Handicapped Act, the Americans with Disabilities Act, and the Rehabilitation Act.
- Payments may be used for the following purposes: to develop a state plan; to meet the requirements of Title III; to improve administration of federal elections; to train election officials, volunteers and poll workers; to improve or replace voting equipment and/or ballot counting equipment; improve number and accessibility of polling places; establish toll-free hotline for voter information and/or to report fraud and other abuses; and voter education.
- If payment is used to improve or replace voting and/or ballot counting equipment, the new equipment must meet the requirements of Title III, and to be eligible, state or precinct must have used punch card or lever machine in federal elections of 2000.

PAYMENTS UNDER TITLE III AND TITLE I

- Title III payments, or requirement payments, are based upon a formula, and states have a 5% matching fund requirement.
- Allocations for Title III payments, if appropriated by Congress, are \$1.4 billion for FY2003; \$1 billion for FY 2004; \$600 million for FY2005.
- Title I payments are the greater of \$5 million or ½ of 1% of the aggregate amount appropriated for the states and the District of Columbia.
- Allocations, if appropriated by Congress, is \$650 million, one-half dedicated to replacing equipment and one-half dedicated to improving administration.

TITLE II: ELECTION ASSISTANCE COMMISSION

- The four members of the Commission are appointed by the President by and with the consent of the Senate. The Commission is to be a national clearinghouse for research, information and for the review of procedures relating to the administration of elections.
- Also created is an Election Assistance Commission Standards Board; an Election Assistance Commission Board of Advisors; and a Technical Guidelines Development Committee.
- The Commission, through its staff, the Board of Advisors, the Standards Board and the Technical Committee has many responsibilities, including, but not limited to following:
 - oversee and report on grant programs created by this Act;
 - develop voluntary technical guidelines/standards for voting equipment, including accessibility for persons with disabilities;
 - develop voluntary guidelines/procedures for elections administration, including registration and list maintenance;
 - conduct and publish studies on various aspects of elections administration, including but not limited to different types of equipment; poll worker training; voter education; registration procedures; accessibility for persons with physical or language challenges; feasibility of electronic voting; and, impact of provisions of this act on federal elections; and,

- report annually to Congress on the status of voter registration and the administration of federal elections, identifying strengths, weaknesses, and recommending improvements, including legislation.

ARTICLE VII: VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS

- Requires each state to designate **one office** responsible for **providing all information** on registration and absentee voting procedures to members of military and citizens overseas.
- Makes an application for absentee ballot under Uniformed Citizens and Overseas Citizens Voting Act, (UCOCVA), good for the next two general federal elections; [i.e. 3 - 4 years]. Prohibits states from refusing registration or absentee ballot applications received prior to statutory date; requires all states to use a standardized oath for voting materials that is to be developed by the Presidential designee under the UCOCVA.
- Requires the Secretary of Defense to ensure access to voting information, as well as ensure timely mailing and proper postmarking of voted ballots by military members and their dependents, including persons on vessels at sea.
- Recommends that the designated office also be responsible for taking absentee ballot applications, sending and receiving absentee ballots from military & overseas voters.
- Requires states to report annually on number of ballots sent to military/overseas voters, the number returned, and the number cast & counted. [EL§9-209].
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TITLE IV: ENFORCEMENT

- Attorney General may bring action for injunctive relief in the appropriate federal district court to enforce the requirements under Title III.
- Each state receiving funds under this Act must maintain a state complaint process which:
 - accepts written, signed and notarized complaints from any person who believes a provision of Title III has been or is being violated.
 - provides for a hearing on the complaint at the request of the complainant.
 - resolves the complaint within 90 days of the date it is received.
- Failure to provide the complaint procedure puts a state out of compliance with the Act.

TITLES V & VI: HELP AMERICA VOTE COLLEGE PROGRAM & FOUNDATION

- Program developed by the Election Assistance Commission no later than 1 year after the Commission is created, for the purposes of encouraging college students to serve as nonpartisan poll workers or assistants, and to encourage state and local governments to use students who participate in this program.
- Program to include workshops, seminars, grant program, development of educational materials and other, appropriate activity; subject to Congressional appropriation, sets aside \$5 million for FY 2003.
- Creates a separate, charitable foundation for the purpose of engaging secondary school students in the election process as poll workers and assistants. Requires the foundation to work with the Chief Election Officer of the state as well as local election and education officials to develop programs for secondary students. All work of foundation must be nonpartisan.
- Subject to Congressional appropriation, sets aside \$5 million for FY2003.

MISCELLANY

- All NVRA functions and all functions of the Office of Election Administration currently established within the Federal Election Commission, are transferred to the newly created Election Assistance Commission, along with the personnel, property, records and other assets. Transfer is effective as soon as the Commission is in place.
- Definition of 'state' includes the District of Columbia, and the territories of Puerto Rico, Guam, American Samoa and the US Virgin Islands.
- The Attorney General must conduct a survey on the adequacy of federal and state criminal penalties for election fraud and other crimes, and report on its findings and make recommendations to the Senate & House Judiciary Committees, the Senate Committee on Rules and Administration and the House Committee on House Administration.
- Mandatory annual audit by the Comptroller General of all payment programs created by this Act.