COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
Bureau of Commissions, Elections and Legislation
210 North Office Building
Harrisburg, PA 17120

Harry A. VanSickle
Commissioner

Website: www.dos.state.pa.us
Phone: (717) 797-5280
Fax (717) 797-2094

March 13, 2006

VIA: Email and Facsimile Transmittal

RE: HAVA Requirements

Dear County Commissioner and County Election Officials:

As you know, effective this year, the Help America Vote Act of 2002 (HAVA) requires the Commonwealth and its county boards of elections to comply with each of the voting system standards prescribed by Section 301(a) of HAVA for all elections for Federal office. This year's General Primary Election on May 16, 2006 is the first election to which the HAVA requirements apply.

To meet these Title III HAVA requirements, the Commonwealth has received substantial Federal funds from the U.S. Election Assistance Commission (EAC). In exchange for the receipt of those funds, the Commonwealth has certified to the EAC that it (including its county boards of elections) will timely comply with all requirements of Title III of HAVA, including those in Section 301(a) prescribing voting system standards.

In addition, under HAVA Section 102, the Commonwealth has received nearly $23 million to support the replacement of lever voting machines and punch card voting systems with new HAVA-compliant systems. This replacement is to be in place no later than the first 2006 election held in the Commonwealth for Federal office – i.e., the May 16, 2006 General Primary. In exchange for receiving these funds, the Commonwealth certified that it would replace all lever voting machines and punch card voting systems in time for the May 16 primary. The EAC has made it clear that Congress expects the EAC to enforce Section 102 of HAVA as written. Section 102 includes the requirement that a state must forfeit funds in the event that it does not replace lever voting machines and punch card voting systems in the manner and time that section of HAVA requires.

The Department of State knows that the county boards of elections have been working diligently over the past several months to obtain voting systems for purchase or lease in time for use in the May 16 Primary despite very tight timeframes. The Department understands that

Exhibit 34

county boards have been working in good faith with vendors of HAVA-compliant voting systems to comply with HAVA's requirements and deadlines.

Nevertheless, over the past several days the Department has learned that some vendors have in the course of pending sales informed counties that the vendor might not be able to supply sufficient numbers of voting machines in time to enable their county customers to meet their HAVA obligations. We also understand that at least one vendor has asked its county customers to ask the Department of State for assurances that, in the event that the county's board of elections were unable to meet its obligations under HAVA because of the vendor's failure to supply the voting system in time for use in the May 16 primary election as the vendor had agreed, Federal funding allocated to the county would not be jeopardized.

The Department of State fully understands that many county boards of elections now find themselves in a difficult predicament as they encounter vendors who, despite many prior assurances, are only now admitting they may be unable to meet their obligations, thus jeopardizing the county's ability to comply with its obligations under HAVA. However, because it is not the final authority on this matter, the Department of State can provide no assurance that a county making a good-faith effort to comply with HAVA would receive its allocated Federal funding if its selected vendor were to fail to supply the required voting equipment, training, and support as promised.

HAVA's requirements are clear. For the May 16 Primary, all counties have a duty to meet each of Section 301(a)'s requirements. HAVA requires that all lever voting machines and punch card voting systems be replaced with HAVA-compliant voting systems in time for use in the May 16 primary. Any county board of elections that is unable to meet its obligations under HAVA risks the county's eligibility to receive the Federal funds – both Section 102 grants and Title II (requirements payments) funds – that the Department of State has set aside for the county.

In addition, you should know that the Federal agency charged with the responsibility to enforce Title III of HAVA – the U.S. Department of Justice (DOJ) – has already threatened the Commonwealth and any non-compliant county with an enforcement action in U.S. District Court. DOJ has the power to seek injunctive and other forms of relief for HAVA non-compliance. In fact, DOJ recently sued the State of New York for its likely inability to meet HAVA requirements.

To protect your county from loss of its Federal funds and a DOJ enforcement action, we recommend that you impress upon your selected vendor the dire consequences – including possibly substantial financial losses – that both your county and the vendor would face if the vendor does not perform as required to enable your county to comply with HAVA in all respects.

If your county is unable to secure assurances that your vendor will be able to deliver sufficient HAVA-compliant voting systems, training, and service to your county in time for the May 16 primary to meet the county's obligations under HAVA, we strongly urge you to explore other alternatives – including cancellation of any contract or purchase order that your county

might have with a non-performing vendor in favor of another vendor that has documented that it will be able to timely supply the voting equipment and services necessary for compliance with HAVA for the May 16 primary.

Finally, any county that has not yet entered into a contract or COSTARS purchase order with a vendor must do so as soon as possible to comply with HAVA. In selecting a vendor, of course, it is of the utmost importance you consider only vendors that can guarantee the county that it will be able to perform in time to enable the county board of elections to meet its obligations under HAVA and so that your county will remain fully eligible to receive its allocated portion of HAVA funds.

The Department of State urges each county to impress upon its vendor the urgency and gravity of this situation. Please convey to vendors that, if they are unable to perform in a manner that assures that Pennsylvania is in compliance with HAVA, those vendors risk being ineligible to do business in the Commonwealth.

The Department of State is ready and willing to aid your county to the greatest extent possible to assure your compliance with HAVA. In addition, the Department is in frequent contact with DOJ, which has expressed its willingness to assist in securing HAVA compliance.

Sincerely,

Harry A. VanSickle

Harry A. VanSickle
Commissioner

c: Douglas E. Hill, Executive Director
County Commissioners Association of Pennsylvania