



A REPORT  
TO THE  
MONTANA  
LEGISLATURE

PERFORMANCE AUDIT

# *The Help America Vote Act and Related Elections Issues*

*The Office of the  
Secretary of State*

AUGUST 2007

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DIVISION

07P-02

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August 2007

The Legislative Audit Committee  
of the Montana State Legislature:

This is our performance audit of implementation of the Help America Vote Act (HAVA) and related elections issues. Findings and recommendations address a wide range of issues relating to the administration of elections in Montana, including the state's new voter registration system, voter identification requirements, polling place information displays, new late registration procedures, voting systems requirements, absentee voting, provisional voting, voting accessibility for people with disabilities, and the state's provision of funding for HAVA and other election reform efforts.

We wish to express our appreciation to the staff of the Secretary of State's office and county election officials for their cooperation and assistance during the audit.

Respectfully submitted,

*/s/ Scott A. Seecat*

Scott A. Seecat  
Legislative Auditor

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## ELECTED, APPOINTED AND ADMINISTRATIVE OFFICIALS

### **The Office of the Secretary of State**

Brad Johnson, Secretary of State

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## REPORT SUMMARY

### The Help America Vote Act and Related Elections Issues

**Election reform efforts have had a significant impact on voting in Montana; state and county election officials can make further improvements to promote equity and effective administration in elections.**

#### Audit Findings

The Help America Vote Act (HAVA) and other election reform efforts have been underway in Montana since 2002. The Legislative Audit Committee prioritized a performance audit of HAVA and related elections issues. Audit work included testing of the new statewide voter registration system (SVRS) developed by the Secretary of State's (SOS) office. We identified concerns with data integrity, including failure to remove ineligible deceased and felon voters from the rolls, and problems with unique identifier numbers. Review of SVRS access and security procedures also identified areas where the SOS office could tighten security and provide better assistance to counties. Review of system maintenance procedures identified weaknesses, which caused SVRS to experience outages on several occasions prior to the 2006 elections (Chapter II).

| MT HAVA Budget              |                   |
|-----------------------------|-------------------|
| HAVA Activity               | Budget (millions) |
| Voting Accessibility        | \$5.7             |
| SVRS                        | \$5.3             |
| Education & Training        | \$2.1             |
| Voting Systems              | \$1.9             |
| Future Contingency/Interest | \$2.1             |
| SOS Administration          | \$0.3             |
| <b>Total</b>                | <b>\$17.4</b>     |

Source: Compiled by the Legislative Audit Division from SOS office records

In relation to new voter identification requirements, audit work showed improvements are necessary in the use of alternative ID options in polling places. We also identified concerns with the lack of legally-mandated voter information in polling places across the state (Chapter III). We addressed the effects of new late registration provisions and found a lack of planning contributed to problems with late registrants during the 2006 elections. The SOS office may have to prepare for further changes as late registration could become more widespread in the future (Chapter IV).

HAVA made changes in voting systems, including prohibition of some voting equipment. Review of Montana voting systems changes shows some votes still have a better chance being counted depending on location (Chapter V). Recent election reform efforts have also included introduction of provisional voting and the expansion of absentee voting (Chapter VI). Although provisional voting has been introduced without any problems, we identified concerns with disparities in the treatment of absentee ballots.

Voting accessibility for people with disabilities was a major focus of HAVA. Audit work shows Montana has made progress in making polling places more accessible. Further improvements in this area should be targeted to address remaining accessibility problems. HAVA also mandated provision of accessible voting systems in each polling place. Montana purchased and distributed accessible Automark voting systems, which we found were subject to a high rate of operational error during the November 2006 elections (Chapter VII).

The final chapter of this report addresses funding requirements for HAVA and other election reform efforts. Recent changes in elections administration will require long-term funding and some reassessment of the balance of responsibility between state and county governments. Our review of election funding issues identified opportunities for a thorough review of current funding structures.

### **Audit Recommendations**

All audit recommendations are addressed to the SOS office and generally address improvements in internal policies and procedures, training provision for election workers, coordination/standardization between different counties, and the adoption of a more long-term management approach for certain elections issues.

# CHAPTER I – INTRODUCTION AND BACKGROUND

## **Introduction**

The Help America Vote Act (HAVA) was passed by Congress in 2002, largely in response to issues with the 2000 presidential elections. HAVA was developed to remedy these issues by imposing uniform standards on state administration of elections. These developments emphasized the fact that apparently minor errors and inconsistencies in elections administration can have far-reaching consequences. The principle that every vote is counted on an equal basis is fundamental to the integrity of the democratic process. This principle was also demonstrated by an example from Montana's own electoral process. In the 2004 elections, effective control of the Montana House of Representatives was decided by a single vote. A decision by the Montana Supreme Court in the case of a disputed result in a house district rested on only one ballot.

## **HAVA in Montana**

Montana elections are administered by county Clerk and Records or Election Administrators. The state's chief election officer is the Secretary of State (SOS), whose office is responsible for implementing state elections laws, providing support to county election officials, and officially certifying election results. The SOS and many local election officials also have additional duties unrelated to elections. Montana's implementation of HAVA has been ongoing since 2002 and has involved both the SOS office and local election officials. HAVA election reform has involved changes in state statutes and administrative rules, establishing new election functions, competencies and procedures, training elections workers in new election duties, purchasing new elections equipment, and investing in new information and other systems resources.

## **HAVA Requirements**

HAVA has also led to an important shift in the balance between federal, state and local government authority over elections procedures. Traditionally, elections have been administered by county governments with minimal direction from above. Supporters of HAVA election reforms contended this decentralization of authority has contributed to wide variations in who gets to vote and how voting is conducted. HAVA aims for a greater degree of uniformity in elections procedures, with the end result being greater participation and less discrimination in the electoral process. HAVA attempts to achieve this by establishing common standards for elections enforced at the federal level and implemented by state and local governments.

## **Changes Mandated Under HAVA**

HAVA requires states make various changes in elections procedures and imposes deadlines for state compliance with these changes. From the state and local perspective, the most important provisions of HAVA are those mandating specific changes in election laws or procedures, which are summarized as follows:

- ◆ **Statewide voter registration system** – states are required to establish and maintain a uniform, official, centralized, interactive, computerized statewide voter registration list. The system is to be maintained at the state level and contain all voter registration records for all jurisdictions.
- ◆ **Voter registration and identification** – states are required to ensure individuals registering to vote provide verification of their identity using driver’s licenses, social security numbers or some other valid form of identification.
- ◆ **Voter information** – states are required to ensure all polling places contained information for voters addressing voting instructions and voting rights.
- ◆ **Replacement of voting machines** – states are required to replace all punch card and lever voting machines, which had been linked to errors and inaccuracies during the 2000 elections.
- ◆ **Voting systems standards** – states are required to make changes in voting systems. These changes include allowing voters to check ballot accuracy and request replacement ballots, notifying voters of errors on ballots, enforcing a manual audit capacity for voting systems, establishing minimum error rates for voting equipment, and defining what constitutes a valid vote.
- ◆ **Provisional voting** – states are required to establish the right to a provisional ballot for individuals claiming legal registration. Additional requirements involved developing procedures to handle and verify provisional ballots, and inform voters of the status of these ballots.
- ◆ **Absentee voting** – HAVA requires states to identify a single point of contact for absentee voting for military personnel and overseas citizens and compile data on absentee voting.
- ◆ **Polling place and voting system accessibility** – HAVA provides funding to help make polling places accessible to people with disabilities. Voting system standards also include a requirement that each polling place contain voting equipment accessible to people with disabilities.
- ◆ **HAVA administration and funding** – states are required to compile and submit state plans addressing compliance with HAVA. Various provisions within HAVA allocate and appropriate funding for different activities mandated under the act.

## **Funding for HAVA Requirements**

Congress appropriated almost \$3 billion to fund HAVA election reforms in the states. Funding was generally allocated based on state populations and polling places. The following table shows Montana’s HAVA funding allocation and actual expenditures by fiscal year.

**Table 1**  
**Montana HAVA Grant Awards and Expenditures**  
**Fiscal Year 2003 Through Fiscal Year 2007**

| Fiscal Year            | Grant Awards*       | Expenditures        |
|------------------------|---------------------|---------------------|
| 2003                   | \$5,003,440         | \$17,199            |
| 2004                   | \$4,199,620         | \$1,440,529         |
| 2005                   | \$139,346           | \$2,358,582         |
| 2006                   | \$7,828,250         | \$8,234,299         |
| 2007                   | \$175,666           | \$1,700,316         |
| <b>Total</b>           | <b>\$17,361,482</b> | <b>\$13,750,926</b> |
| <b>Funds Remaining</b> |                     |                     |
|                        | <b>\$3,610,556</b>  |                     |

\* Including interest and other earnings.

**Source: Compiled by the Legislative Audit Division from SABHRS records.**

Montana has received around \$17.3 million to fund HAVA-related activities. The state established a federal special revenue account within the SOS office to account for the funding. To date, HAVA expenditures have totaled approximately \$13.7 million, leaving around \$3.6 million in remaining funding for future activities. The majority of these expenditures were made between the 2004 and 2006 general elections when most of the federal HAVA deadlines came into force.

States were permitted significant latitude in how they implemented HAVA and how funding was allocated between different activities. Montana's funding priorities are outlined in the Montana State HAVA plan, which was released

in 2003 and amended in 2005. Montana's HAVA state plan was developed by the SOS office in collaboration with a broad range of groups, officials and individuals involved with elections administration. Roughly two thirds of Montana's proposed expenditures were for costs relating to polling place and voting accessibility for people with disabilities (34 percent), and development of the statewide voter registration system (32 percent). Aside from these two large expenditure areas, around 11 percent of funds were budgeted for the purchase of new voting systems equipment for counties, and 13 percent was allocated to various education, outreach and training activities for the voting public and for election officials and poll workers. Remaining funds were allocated to administrative expenditures in the SOS office (2 percent) and future contingencies and ongoing maintenance costs (8 percent).

## **Audit Approach**

The Legislative Audit Committee prioritized a performance audit of HAVA and related elections administration issues. We conducted an initial assessment of risks related to these issues prior to the implementation of HAVA, and recommended a performance audit be postponed until major changes in elections procedures were implemented by SOS and counties.

## **Audit Scope and Objectives**

Audit scope was determined primarily through reference to the specific provisions of HAVA affecting the administration of elections in Montana. In addition to HAVA provisions, we also expanded audit scope to include other recent changes in Montana's elections laws. These additional changes have included the introduction of late registration (including registration on Election Day), and the expansion in availability of absentee voting. Although these other changes are not directly related to HAVA, they were a significant issue during

the last election cycle and have affected implementation of HAVA provisions. Our scope was established to focus specifically on the last two general election cycles (2004 and 2006), but some trend analysis also includes prior election cycles.

Audit objectives were based on information and input gathered during audit planning work. In general, our objectives addressed the efficiency and effectiveness of elections administration through the Secretary of State's office and whether the office had taken the necessary steps to ensure effective implementation of various election reforms at the county level. Specifically, we developed objectives to address the following areas of elections reform:

- ◆ Security and stability of the statewide voter registration system.
- ◆ Implementation status of new voter identification and information requirements.
- ◆ Assessment of the impacts of late registration.
- ◆ Changes in county voting systems and equipment.
- ◆ Provisional and absentee voting.
- ◆ Accessibility for individuals with disabilities.
- ◆ Funding requirements for HAVA and other election reform efforts.

## **Audit Methodologies**

To address our audit objectives, we developed various methodologies including the following:

- ◆ **2006 General Election observations** – audit staff conducted polling place observations during the November 2006 General Elections. Observations were conducted in 86 different polling places in 30 Montana counties. Audit staff observed over 1,300 voters and these observations were used as a statistical sample for a variety of election procedure attributes.
- ◆ **Analysis of statewide voter registration system (SVRS) data** – under our first audit objective, information systems auditors conducted extensive testing and analysis of SVRS functionality and security features. SVRS data was also used extensively in analysis of the attributes of Montana's voting population and trends in voting behaviors.
- ◆ **Survey of county election officials** – we developed an online survey to obtain input from Montana's county election officials. The survey was sent to election officials in all 56 counties and over 80 percent responded to the survey to provide input on their experiences in implementing HAVA and elections administration in general.

In addition, audit work was conducted in many areas addressing specific aspects of HAVA or other elections laws. Appendix A of this report provides a full discussion of audit scope, objectives and methodologies.

## Report Organization

The remainder of this report is organized in chapters addressing specific functional aspects of elections administration. For each of these functional areas, we provide conclusions and recommendations relating to the implementation status of various changes in elections administration, the extent of compliance with HAVA (where applicable), and the effectiveness of the controls put in place by the SOS office. Specifically, we address the following areas:

- ◆ Chapter II – Statewide Voter Registration System
- ◆ Chapter III – Voter Identification and Information
- ◆ Chapter IV – Late Registration
- ◆ Chapter V – Voting Systems
- ◆ Chapter VI – Provisional and Absentee Voting
- ◆ Chapter VII – Polling Place Accessibility
- ◆ Chapter VIII – Funding Election Reform



## CHAPTER II – STATEWIDE VOTER REGISTRATION SYSTEM

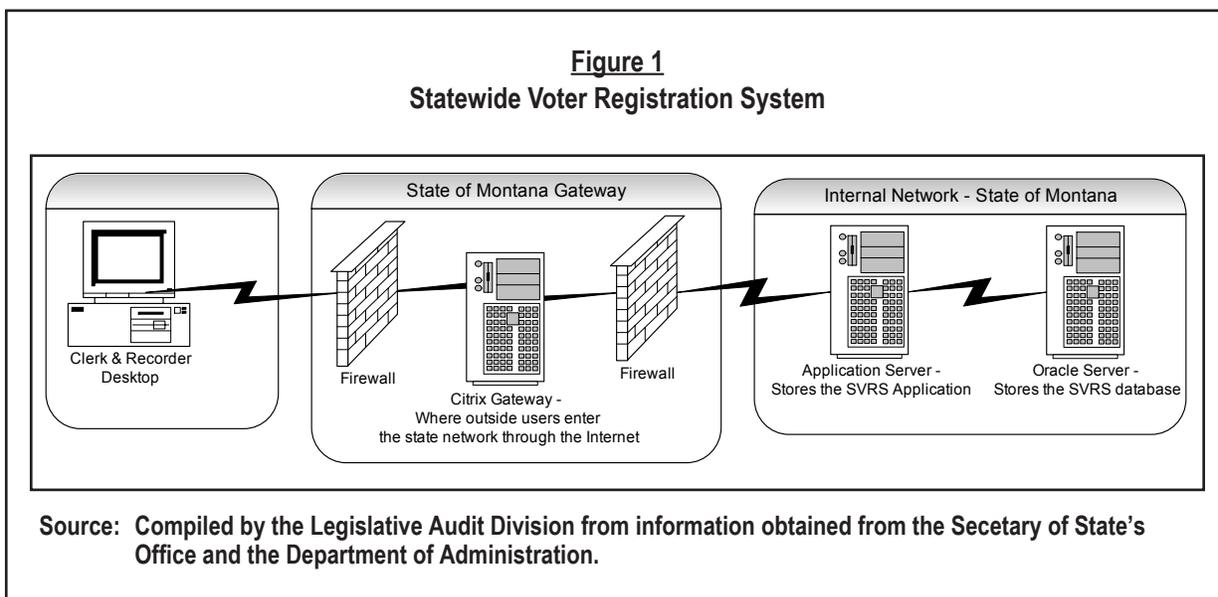
### Introduction

The Help America Vote Act (HAVA) was enacted to improve the fairness and accuracy of elections through reform of elections administration and maintenance of voter information. As part of these reforms, HAVA requires states develop a central uniform voter database.

### **Montana's Statewide Voter Registration System**

In order to comply with HAVA, the Secretary of State's (SOS) office implemented the Statewide Voter Registration System (SVRS) in August of 2005. The Montana SVRS is a voter registration database where all voter records for the state of Montana are to be held. Another function of the SVRS is to serve as an interface for county election officials to enter, update, and delete voter information, as well as identifying potential ineligible voter records to be removed from the active voter list. The SVRS has controls in place to identify the records of voters who are deceased, incarcerated felons, and underage, as well as voters who have duplicate records.

The SVRS is a centralized application system used by all counties to access all Montana voter records. When an individual registers to vote at a county Clerk and Recorder's office, their information is entered and stored in the SVRS. The following figure illustrates SVRS functionality.



### **Audit Risks Associated with SVRS**

Although the SVRS can serve as a useful tool for central storage and uniform administration of voter records, it also holds extremely valuable information. Access to SVRS data by

unauthorized individuals could result in manipulation of voter data, or identity theft. Considering the risk involved with the SVRS, we conducted audit work over the security of the system and the integrity of voter data, including:

- ◆ Assessment of data integrity (accuracy and completeness of voter information).
- ◆ Review of SVRS user access.
- ◆ Evaluation of security procedures for SVRS desktops at the county level.
- ◆ Evaluation of the effectiveness of system maintenance procedures.

### **SVRS Data Integrity**

The SVRS is comprised of data for every registered voter, including name, date of birth, address, voting history, and a unique identifier (driver's license number or last four digits Social Security Number). SVRS data is used by counties to ensure only eligible voters can participate in the electoral process. HAVA specifies any SVRS system a state chooses to implement must have tools to remove ineligible voters, including duplicate entries, deceased voters, and incarcerated felons. Voter records in the SVRS are matched against databases from the Department of Corrections (DOC), the Department of Public Health and Human Services (DPHHS), and the Department of Justice (DOJ) to identify ineligible voter records. When the SVRS identifies an ineligible voter, it is the responsibility of county election officials to remove these voters from the active voter registry in the SVRS. For this matching process to work, it is important that voter record data is complete and accurate. Specifically, each voter record requires a unique identifier to ensure a successful match with one of the other state databases and with other records in the system.

### **Deceased Individuals and Incarcerated Felons Eligible to Vote**

We conducted audit work to determine if the SVRS is effective in removing deceased and incarcerated felons using a computer assisted audit tool to compare voter records with data from the DOC and DPHHS databases. Our analysis identified exceptions including 223 eligible voters who were considered incarcerated felons and 36 eligible voters who are deceased. Further analysis showed these numbers were not accurate because the data from the DOC and DPHHS was outdated. The felon data had not been updated since August of 2006, nearly three months prior to the last general election and the deceased data had not been updated since November of 2005, a year prior to the last general election.

We notified the SOS office its data was not current. According to the SOS office, the staff members who were most familiar with SVRS operations left the office without documenting instructions on how the system data is updated. As a result, the SOS office was relying heavily on the system vendor to maintain and operate the SVRS and did not obtain a complete understanding of SVRS functionality. This resulted in felon and deceased voter data not being updated. In February and March of 2007, the office had updated the DPHHS and DOC data. Once data was current, we re-analyzed the voter data. Our results still showed 57 incarcerated felons and 37 deceased individuals eligible to vote. Based on this, the potential exists that a deceased voter record could be used to vote, but our testing did not identify evidence showing deceased individuals or incarcerated felons had voted.

## **Voters with Duplicate Records**

County election officials can utilize the SVRS to identify duplicate records. When a new voter is entered into the system, the SVRS returns a notification showing whether the new voter may already have a record. This notification also provides a confidence rating based on the amount of voter information matching between the new record and an existing record. The confidence rating is based on the voter's name, date of birth, and driver's license or last four digits of Social Security Number (SSN). If all identifiers are matched, the SVRS will return a 100 confidence rating meaning the likelihood of a duplicate is high. If only some of the identifiers match, confidence ratings of 90, 80, or 70 are returned. County election official review potential duplicates to determine if there is a match and update the records accordingly. We tested SVRS data to determine if this process is working to ensure voters do not have multiple records.

Testing for duplicate voter records involved analyzing SVRS voter data by comparing records sharing common identifiers. Our testing showed 78 voters have active duplicate voter records in the SVRS. No evidence was found indicating these individuals voted more than once in any election. However, it is important to note that we only included results producing the highest confidence rating. Additional comparisons returned other potential duplicate records, but they did not produce a high enough confidence rating to conclude the duplicate records belonged to a single voter. Regardless, the potential exists an individual could submit multiple votes in a single election.

## **Inaccuracies Identified in SVRS Date of Birth Records**

Review of SVRS data also identified numerous examples of active voter records with apparently inaccurate date of birth entries. Date of birth is one of the unique identifiers used to distinguish voters and is also necessary to identify whether an individual is old enough to vote. Our review of SVRS data identified the following anomalies in date of birth records:

- ◆ SVRS shows 37 active voters whose date of birth indicates they are less than 18 years old and should, therefore, be designated as inactive in the system.
- ◆ The system contains records for approximately 480 voters whose dates of birth are incorrectly formatted (for example, many of these incorrect records show birth dates in the first century A.D.).
- ◆ SVRS records for around 1,960 active voters show the individuals are more than 120 years old.

SVRS controls prevent election officials from entering incorrect/ineligible dates in the date of birth field, so these inaccuracies must be attributable to merging of legacy records from previous systems. For some of these legacy records, a date of birth would not have been required or was not collected. However, these records have not been updated and remain in the system associated with active registered voters.

## Problems with Ineligible and Duplicated Voters Linked to Unique Identifiers

County election officials and SOS have controls in place to identify and deactivate ineligible voter records, deceased voter records, incarcerated felon records, and duplicate records. However, these controls are not being used by counties on a consistent basis. In order for these controls to work, each voter record must have a unique identifier such as a driver’s license number or SSN. The identifiers are required to match voter records against records from the DPHHS and DOC databases. These identifiers are also needed to provide a high confidence rating when the system identifies potential duplicates. The SVRS has edits requiring all new voter records to have a unique identifier. However, all voter records created prior to the implementation of the SVRS were imported directly into the system and bypassed this control. As a result, 242,465 active voters do not have a unique identifier. There are also currently no procedures in place to update this information.

## Inconsistencies in County Procedures for Purging SVRS Records

We asked county election officials several survey questions relating to procedures for purging (removing) ineligible or duplicated voters from the SVRS. The following table summarizes responses to selected questions.

**Table 2**  
**Survey Responses Relating to SVRS Purge Procedures**

| Question  | Response Options   | Response Percentage |
|---|--|---------------------|
| <i>What method or methods do you use to identify and remove deceased voters from the voter registration list?</i>     | Failure to respond to registration notices                                       | 7%                  |
|   | Contact from family member or direct knowledge                                   | 64%                 |
|   | Use SVRS interface with state records (DPHHS)                                    | 31%                 |
|   | Review of local newspapers for death notices                                     | 76%                 |
|   | Reports or information from other county government offices                      | 71%                 |
|   | Other  | 24%                 |
| <i>What method or methods do you use to identify and remove incarcerated felons from the voter registration list?</i> | Use SVRS interface with state criminal records                                   | 22%                 |
|   | Review of local newspapers/media for court reports of felony convictions         | 8%                  |
|   | Reports or information from county attorney’s office or local police departments | 56%                 |
|   | Other  | 42%                 |

Source: Compiled by the Legislative Audit Division from survey data collected from county election officials.

The SVRS provides the SOS a consistent and centralized tool for identifying and removing deceased and incarcerated felon voter records. However, the survey results show a minority are using the SVRS to assist them in removing deceased and incarcerated felons. The results also demonstrate a wide variety of methods are being used throughout the different counties to accomplish this task. From county to county, how effectively ineligible records are being purged can vary. Based on our audit findings, and the existence of a number active voter records that should have been purged, there are clearly weaknesses with the inconsistent and varied procedures in place.

### **Secretary of State Should Actively Manage SVRS**

Since the state now has a centralized voter registration system in place, centralized management should be implemented to maintain it. The SOS should take a more active management role, and should help facilitate the following:

- ◆ Each county should use the SVRS as a primary method of identifying deceased, incarcerated felon, and duplicate voter records.
- ◆ Each county must ensure all voter records are complete, accurate, and include a unique identifier so the system can effectively identify ineligible voters and limit the potential for fraud and error.
- ◆ Policy should be developed to provide the counties with guidelines on how to implement SVRS ineligible voter checks and how to manage and update voter information within their county.

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#### **RECOMMENDATION # 1**

*We recommend the Secretary of State's office work with counties to develop a statewide data integrity improvement plan addressing the updating and maintenance of voter information and uniform implementation of SVRS controls throughout the state.*

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### **System Access**

To access the SVRS, an individual is required to have an authorized user account with a unique state issued ID and password. These accounts are created by SOS office administrators and at the county level. It is the administrator's responsibility to limit the level of access an individual has by assigning different privileges based on job responsibilities.

### **Excessive Access to SVRS Voter Records**

We used a computer assisted auditing tool to analyze SVRS user data to ensure only authorized users with acceptable privileges are able to access SVRS data. Our analysis returned the following results:

- ◆ County administrative access should only be assigned to Clerk and Recorders and county election administrators. Our analysis returned 57 county admin accounts belonging to users who are not county election administrators. This

results in users who do not have the proper authority being able to create additional user accounts. This increases the possibility of unauthorized access to SVRS data.

- ◆ SOS Elections Bureau staff have been granted system access allowing them to assign administrative privileges used to change or add voter information. The ability to change and update local voter information should only reside with county staff.
- ◆ Two third-party vendors and one former employee have access allowing them to change, remove, or add voter information (SOS has since deactivated these accounts).
- ◆ Twenty-five accounts exist without a state assigned ID and seventy-five accounts had been assigned an ID but to a generic name. Generic accounts do not maintain any individual responsibility. If an individual removed or changed voter information, there would be no accountability because the account cannot be traced back to a specific individual).

### **Secretary of State's Office Should Enforce System Access Policies**

The SOS currently reviews the SVRS access list on a biannual basis for accounts no longer being used. However, they do not have procedures to review or analyze the access list for individuals with excessive access or individuals who should have no access. There is also no policy or procedure in place to ensure all users can be identified to hold them accountable in the event they remove, change, or add voter information without authorization.

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#### **RECOMMENDATION #2**

*We recommend the Secretary of State's office improve controls over SVRS access by:*

- A. *Developing procedures to comprehensively review access to the SVRS to ensure authorized individuals have access appropriate to their job duties;*  
*AND*
  - B. *Working with counties to develop policies and procedures to ensure system users can be uniquely identified.*
- 

### **County IT Security**

The SVRS is accessed using desktop computers connected to the Internet at county election offices across the state. The SOS office maintains it is the responsibility of each county to provide security over the desktops used to access the SVRS. However, many of the counties do not have IT professionals on staff, or rely on a third-party vendor to supply IT support for their networks and desktops. As a result, the level of security from county to county is inconsistent. Audit work was conducted in three different counties to determine what levels of security are being implemented to SVRS desktops at the counties. We also surveyed county election officials regarding what type of IT support they have in place and how they are securing their desktops.

## **Inconsistent Implementation of SVRS Security**

To test the security levels on the SVRS desktops, we developed a checklist based on security requirements outlined in state policy and potential security threats identified by the Department of Administration. The checklist included testing addressing remote connectivity (third-party access to desktops), physical access (protection from unauthorized public access), outdated software (operating systems no longer supported by vendors or systems not current with important security updates and patches), anti-virus (presence of current anti-virus software), surf-controls exemption (blocking dangerous or unnecessary websites), and default accounts and local administrative accounts (Windows operating systems come with default guest and admin accounts, which are well known and can be exploited).

We visited the county election offices in three different counties. At each location, we tested two machines commonly used to access the SVRS system. As a result of our testing, we identified appropriate controls functioning in the following areas:

- ◆ All counties were supporting their operating systems.
- ◆ All counties had current anti-virus.
- ◆ All counties had a surf-control filter to prevent users from accessing dangerous sites on the Internet.

We also identified several areas where county desktop security procedures could be improved, which are listed as follows:

- ◆ All counties had security vulnerabilities as a result of missing patches.
- ◆ One county was configured to allow remote connectivity.
- ◆ One county had a desktop physically available to the public.
- ◆ All counties still had default user accounts active on the SVRS desktops.
- ◆ All counties configured their desktops to lock after 10 to 15 minutes of inactivity, but this function was disabled in two counties.

## **Survey Results Confirmed Security Weaknesses**

Security vulnerabilities are most likely more prevalent in counties not having acceptable levels of IT support. We conducted a survey of county election officials, which included various questions about county IT security issues. Responses for selected survey questions are included in the following table.

**Table 3**  
**Survey Responses Relating to County IT Security**

| Question   | Response Options            | Response Percentage |
|--|-----------------------------|---------------------|
| <i>Who is responsible for computer security and maintenance for your county?</i>   | Full-time IT staff          | 36%                 |
|  | Part-time IT staff          | 2%                  |
|  | Other county employee       | 29%                 |
|  | Private contractor          | 26%                 |
|  | Other                       | 7%                  |
| <i>How often does your county perform updates or install patches for computer operating systems or security software?</i>  | Daily                       | 24%                 |
|  | Weekly                      | 24%                 |
|  | Monthly                     | 9%                  |
|  | Every few months            | 12%                 |
|  | Annually                    | 2%                  |
|  | Don't Know                  | 29%                 |
| <i>How would you rate the information and advice provided by the Secretary of State's office and/or the system vendor regarding IT system security for running SVRS?</i> | Excellent                   | 10%                 |
|  | Good                        | 22%                 |
|  | OK                          | 45%                 |
|  | Poor                        | 10%                 |
|  | Did not receive information | 13%                 |

Source: Compiled by the Legislative Audit Division from survey data collected from county election officials.

Based on survey results, there is a wide disparity in how counties are securing SVRS desktops. In terms of updating and patching their desktop operating systems, 48 percent of counties perform this task at least on a weekly basis. However, 14 percent of counties represent they do not even perform this task on a monthly basis and 29 percent state they cannot identify if or when this process occurs. Security patches are designed to resolve vulnerabilities in operating system that could be exploited by an outside threat such as a hacker or a virus. Since the SVRS is centralized, if one county has not sufficiently secured their desktops, this could affect the operations of all counties. Another concern is some of the counties may not have a proper understanding of how to secure their SVRS desktops. Survey results show 29 percent rely on non-IT personnel to handle maintenance and security their computers. An additional 13 percent stated they have received no assistance from the SOS office.

### **Secretary of State Should Support County IT Security**

Audit work shows there is no consistent level of security implemented by the counties. The SVRS is a centralized system and all of the counties rely on it. If one desktop is exploited,

voter data throughout the state could be jeopardized. The office has developed a help desk including an audit function designed to identify security threats at the county level and provide assistance to resolve those threats.

To assist counties in developing a more consistent approach to securing their SVRS desktops, the SOS office should establish guidelines detailing desktop security requirements to be uniformly implemented by all counties. Using the help desk function, the SOS would have a mechanism to assist counties that may not have adequate IT support in meeting these designated security requirements. Included in the help desk the SOS could also implement an audit function where random reviews of county SVRS desktop security is performed to ensure the counties are meeting security requirements. If the help desk identifies security weaknesses at a specific county, that function could be used to provide assistance in strengthening IT security.

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**RECOMMENDATION #3**

*We recommend the Secretary of State's office assist counties in implementing effective desktop security procedures by:*

- A. Developing SVRS desktop security procedures at the county level; AND*
  - B. Providing counties with desktop security advice and guidance through the SVRS help desk; AND*
  - C. Implementing an audit process to identify security weaknesses at the county level.*
- 

## **System Maintenance**

Throughout the lifecycle of an IT system, upgrades, regular maintenance, and improvements will be required. In order to implement a change in a complex system, it is important to have a change management procedure in place to ensure a system change does not negatively impact operations. A change management process is always an important part of maintaining the SVRS, but in the few weeks leading up to an election, it is especially important. Due to the high number of voters registering during this time period, the SVRS needs to remain available at all times. The SOS office has issued instructions to counties on how to register voters in the event of a system outage. However, to further minimize any risk that voters could be discouraged from registering or voting, an effective change control process must be in place to ensure the SVRS is always available. If an outage does occur, a backup system should be implemented to provide alternative access to the system.

### **SOS System Maintenance Procedures**

According to SOS IT management, when a change is made to the system, a process is in place to ensure the changes do not hinder SVRS operations. If county election officials identify a problem with the operation of the SVRS, they can submit a request to the system vendor. The vendor will provide the SOS office with the request for change to the system for approval. If approved, the vendor will update and test the SVRS with the requested change. Once the vendor determines the change is working as intended and has not negatively

affected the SVRS, they provide the SOS office with the updated system. The updated system is then sent to the Information Technology Services Division (ITSD) where further testing involving county users is conducted. If the county users approve of the change and verify the SVRS is working as expected, the system will be put into full service.

### **System Outages Affected Elections Administrations**

Audit work identified exceptions to this change control process resulting in extended outages to the SVRS around Election Day. On October 16, 2006, the SVRS system experienced an outage for four hours, leaving county election staff unable to register voters during that time period. We found this outage was due to a configuration change to a network component critical to the SVRS. The SVRS was not tested following the configuration change. When put back into production, the new configuration prevented counties from accessing SVRS. The SVRS has a back-up system that is to be activated during situations like this to prevent an outage. The back-up system was never implemented due to a miscommunication between the SOS office and ITSD as to when the back-up activation should occur.

On November 7, 2006, Election Day, another outage occurred. This outage could have been prevented by ITSD installing a network patch released in August 2006, but the patch was never installed. As with the previous outage, ITSD also did not implement the backup system. This outage likely affected some of the hundreds of voters waiting in line at county courthouses around the state. In our survey of county election officials we asked several questions relating to system outages on or around the 2006 General Elections. Around 64 percent of county election officials reported these outages had a negative impact on their operations.

### **Secretary of State's Office Should Revise Service Agreements for SVRS**

The office and ITSD currently have a service level agreement (SLA) detailing what is expected from each entity. The current SLA does not identify how a change control process should be implemented. The SLA does not specify when, how, and by whom the backup system should be implemented. Without the existence of clear language identifying roles and duties, miscommunication has occurred between the office and ITSD, which resulted in system outages.

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#### **RECOMMENDATION #4**

*We recommend the Secretary of State's office revise the current service level agreement with the Information Technology Services Division to include specific assignment of responsibilities and procedures relating to the SVRS change control process and implementation of the back-up system.*

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# CHAPTER III – VOTER IDENTIFICATION AND INFORMATION

## **Introduction**

Among the most visible results of the Help America Vote Act (HAVA) have been new state requirements that voters provide identification (ID) during registration and voting. New voter ID requirements are linked to the establishment of the statewide voter registration system (SVRS) discussed in the previous chapter. New voter ID standards are necessary under HAVA to ensure statewide voter registration systems function correctly and do not allow duplication of voter records.

HAVA also sets new standards for the availability of information for voters within polling places. The Act places certain responsibilities on voters regarding identification and registration, but also seeks to improve the level of information available to them within polling places. Specifically, HAVA requires all polling places contain publicly posted information including sample ballots, election dates and polling hours, voting instructions, voting rights, and federal and state elections laws.

We conducted audit work to assess the impacts of the new voter identification requirements on polling for the 2006 General Election. We also conducted work addressing the availability of voter information within polling places. Findings and recommendations relating to these two areas are summarized in the following sections.

## **HAVA Changes in Registration Procedures**

Specific HAVA provisions for voter identification include the following requirements:

- ◆ Registration applications for federal elections must include a driver's license number or the last four digits of a Social Security Number (SSN). For applicants with neither number, a unique identifier number generated through the statewide registration list can be used. States are required to ensure the statewide registration list provides a means of verifying the identification numbers provided by applicants.
- ◆ First-time voters and voters who register by mail must present one of the following forms of ID when voting in person or by mail if they did not do so when registering to vote:
  - A current and valid photo identification; or
  - Copy of a current utility bill, bank statement, government check, paycheck, or other government document showing the voter's name and address.
- ◆ Voters who cannot present the required forms of ID are given an alternative voting option of casting a provisional ballot.
- ◆ HAVA establishes standardized language to be used in mail voter registration forms containing questions regarding US citizenship and the applicant's age.

Montana law was revised in 2003 to incorporate changes in voter ID requirements mandated under HAVA. Montana's election laws conform with HAVA because they impose ID requirements on all voters, regardless of whether they are voting for the first time or they registered by mail or in person. As explained in the Montana state HAVA plan, ID requirements were applied universally in order to avoid the additional burden on poll workers of distinguishing between first-time voters, mail-in registrants and transfer voters.

## **Assessment of Montana's Voter Identification Procedures**

All electors voting in person at Montana polling places must now present valid ID before receiving a ballot. Montana law also allows for use of either a photo ID or another form of ID that shows the voter's name and address. Statute establishes the right of voters to receive a provisional ballot if they are unable to provide an acceptable form of ID. We conducted audit work in various areas to determine how well Montana's new voter ID requirements are working. The following sections outline analysis and findings from survey responses from county election officials, and observations conducted during the 2006 General Election.

### **County Election Officials Survey Responses**

We asked Montana's county election officials several questions about how new ID requirements impacted election administration. The following table summarizes responses to selected questions.

**Table 4**  
**Survey Responses Relating to Voter Identification Requirements**

| Question  | Response Options  | Response Percentage |
|---|-------------------|---------------------|
| <i>Did the Secretary of State's office provide you with clear guidance on new voter ID requirements?</i>                            | Yes               | 93%                 |
|   | No                | 7%                  |
| <i>Do you think Montana's voter ID requirements are too strict or not strict enough?</i>  | Too strict        | 10%                 |
|   | About Right       | 80%                 |
|   | Not strict enough | 10%                 |
| <i>In your experience have the new ID requirements prevented or discouraged otherwise eligible people from registering to vote?</i> | Yes               | 12%                 |
|   | No                | 81%                 |
|   | Don't Know        | 7%                  |
| <i>In your experience have the new ID requirements been important in deterring or preventing electoral fraud?</i>                   | Yes               | 44%                 |
|   | No                | 21%                 |
|   | Don't Know        | 35%                 |

Source: Compiled by the Legislative Audit Division from survey data collected from county election officials.

Survey responses revealed several notable features regarding the views of county elections officials on voter ID requirements:

- ♦ Over 90 percent of respondents agreed that the SOS office had provided clear guidance on the ID issue. State officials devoted considerable time and effort to public education and election worker training on ID requirements, and these efforts appear to have contributed to a greater level of understanding among county election officials.
- ♦ Eighty percent of respondents said the new requirements have been set at about the right level, minorities of respondents thought ID requirements were either too strict or not strict enough. This result probably reflects Montana’s neutral approach to the ID issue and the decision to apply ID requirements to all voters, but not opt for strict photo ID-only standards.
- ♦ County election officials do not believe ID requirements have deterred eligible voters from registering, but they are less sure if the new requirements have affected electoral fraud. County officials with large numbers of voters tended to be more convinced that new ID requirements had affected electoral fraud. Conversely, county officials with small numbers of voters were more concerned about the potential for ID requirements to discourage eligible voters from registering.

## 2006 General Election Observations

Audit staff conducted polling place observations during the November 2006 General Election and included review of the process followed by poll workers in checking registration and identification information prior to issuing ballots. Observational data was gathered to show whether poll workers were verifying voter ID, and what actions were taken in cases where the voter was unable to produce the ID. The following table shows sample attribute values for the different voting outcomes we observed. The projected values for number of voters were calculated based on statistical analysis of sample data at a confidence level of 90 percent (the numeric values represent the mean estimate within a high low/range).

| Identification Procedure Outcome                 | Sample Attribute Percentage | Projected Number of Voters |
|--|-----------------------------|----------------------------|
| Failure to Verify ID                             | 0.43%                       | 1,768                      |
| No ID – Voter Leaves Polling Place               | 0.57%                       | 2,343                      |
| No ID – Voter Uses Polling Place Elector ID Form | 1.14%                       | 4,686                      |
| No ID – Voter Uses Provisional Ballot            | 0.21%                       | 863                        |

Source: Compiled by the Legislative Audit Division from Election Day voter observation data.

## **Introduction of ID Requirements has been Largely Successful**

The experience of the 2006 General Election suggests the introduction of voter ID requirements in Montana has been mostly successful and has not resulted in widespread problems. Montana has taken a balanced approach to ID requirements, which applies the same standards to all voters, but also allows for both photo and document-type ID to be used. As evidenced by Election Day observations, Montana's voter ID requirements have generally been applied in a consistent manner across the state. One area of inconsistency appears to be the use of the polling place elector ID form.

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### **CONCLUSION**

*The introduction of new voter identification requirements in Montana has been largely successful, but some inconsistencies remain in the use of polling place elector ID forms.*

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## **Inconsistencies in Use of Polling Place Elector ID Forms**

Observations also showed that there were variations in how voters without ID were treated in polling places. We can estimate that around 7,900 or slightly fewer than 2 percent of voters in the 2006 general elections were not able to produce a required form of ID when casting a ballot. HAVA and Montana law allow voters unable to produce ID at the polling place to use alternative means through either completing a polling place elector ID form, or casting a provisional ballot.

Our voter observations indicate some voters were unable to present ID when they arrived to vote and chose to leave the polling place. In some of these cases it was likely the voter was able to retrieve required ID from a vehicle or lived/worked nearby and was able to return with ID. For these voters, returning with ID was probably an easier option, but for some other voters this may have been an inconvenience that could have been avoided by using the polling place elector ID form. Our observations indicate poll workers were not applying alternative ID options uniformly for all voters. These kinds of inconsistencies could lead to some voters being turned-away from the polls unnecessarily and, possibly, being unable to cast an otherwise eligible vote.

## **Elections Guidance Should Emphasize Alternative Identification Options**

Because of the potential impacts of the new HAVA ID requirements, the SOS office conducted extensive training and public education efforts aimed at providing information for poll workers and the voting public. The increased emphasis on HAVA ID requirements may have led some poll workers to overlook the alternative ID options available to legally registered voters or those claiming to be registered.

The Secretary of State's office should revise poll worker training materials and provide appropriate guidance to county election officials to re-emphasize the availability of alternative ID options. The successful introduction of ID requirements for Montana elections means there is a lower risk that providing information on ID alternatives will

cause confusion among poll workers or voters. The SOS office could work collaboratively with counties to identify where further training, assistance or guidance could be provided to further improve the use of alternative ID options. By continuing to emphasize the availability of alternative ID options, election officials can better ensure equal treatment for all voters.

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**RECOMMENDATION #5**

*We recommend the Secretary of State's office continue to review and revise training materials and other elections guidance to emphasize the availability of polling place elector ID forms and work with counties to ensure effective implementation.*

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## **Voter Information Requirements**

HAVA mandates the provision and public posting of different types of information for voters within polling places. The act specifies the following information be posted in polling places:

- ◆ Sample version of the ballot that will be used for the election.
- ◆ Information regarding the date of the election and the hours during which polling places will be open.
- ◆ Instructions on how to vote, including how to cast a vote and how to cast a provisional ballot.
- ◆ Instructions for mail-in registrants and first-time voters.
- ◆ General information on voting rights under federal and state laws, including information on the right to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights have been violated.
- ◆ General information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation.

## **Election Day Observations and Survey Results**

Audit staff conducted Election Day observations during the 2006 General Election. Observations were conducted in 86 different polling places in 30 counties. These observations included assessment of the availability of HAVA-mandated voter information within polling places. The following summarizes results from our observations of information displayed in polling places:

- ◆ 84 percent displayed sample ballots used in the election.
- ◆ 21 percent displayed election dates and polling place opening/closing times.
- ◆ 43 percent displayed instructions for first-time or mail-in registrants.
- ◆ 74 percent displayed information on how to vote and provisional voting procedures.
- ◆ 53 percent displayed general information on voting rights and elections laws.
- ◆ 6 percent displayed information on complaints procedures and contacting elections officials.

Our Election Day observations indicate widespread disparities in the types of voter information being made available in the state's polling places. The most consistency was seen with sample ballots, which were available in nearly 85 percent of polling places, and general voting procedures (including provisional voting), which were available in around three quarters of polling places. For most of the other main information categories outlined in HAVA, less than half of polling places were in compliance with legal requirements. Of particular concern was the fact that only six percent of polling places publicly posted information on contacting election officials with complaints about violations of voting rights.

Concerns highlighted in our observational data were generally confirmed by responses to our survey of county election officials. Responses to selected questions regarding polling place information postings are included in the following table.

**Table 6**  
**Survey Responses Relating to Voter Information Requirements**

| Question   | Response Options                                | Response Percentage |
|--|---|---------------------|
| <i><b>Did you receive informational posters and flyers for use in polling places from the Secretary of State's office addressing any of the following information?</b></i> | How to cast a vote                              | 35%                 |
|  | How to cast a provisional ballot                | 38%                 |
|  | ID requirements for all voters                  | 100%                |
|  | Information on voting rights and election laws  | 60%                 |
| <i><b>According to your instructions to poll workers what kinds of voter information are supposed to be displayed in different areas of polling places?</b></i>            | Sample ballot                                   | 98%                 |
|  | Date of election and polling place hours        | 67%                 |
|  | How to cast a ballot and vote provisionally     | 83%                 |
|  | Instructions for mail-in/first-time registrants | 31%                 |
|  | Information on voting rights and election laws  | 79%                 |
|  | State elections complaints procedures           | 40%                 |

Source: Compiled by the Legislative Audit Division from survey data collected from county election officials.

As shown, when asked whether they had received polling place informational posters from the SOS office, county election officials responded consistently for only one category (voter ID requirements). For the other types of information referenced in the survey question, significant proportions of counties reported receiving no information posters or flyers from the SOS office. Similar responses were seen in relation to the instructions counties gave to poll workers regarding voter information displays within polling places, which showed little consistency between different counties. Documents provided by the SOS office show counties should have received directives detailing the types of informational posters to be posted in polling places. However, results from the field show this guidance was either misinterpreted or ignored in some circumstances.

## **Secretary of State Should Address Inconsistencies in Voter Information**

Observation and survey response data clearly shows significant disparities in the level of information provided to voters in polling places across the state. These disparities have the potential to result in some voters being deprived of information that would assist them in casting valid votes or effectively pursuing their rights under federal and state elections laws. Under HAVA requirements each polling place in the state should be displaying a prescribed minimum amount of information for voters. Coordinating separate provision of this information among Montana's 56 counties could present difficulties and may not ensure the required level of consistency. As an alternative, the SOS office and counties could develop a uniform and standardized voter information display. By working collaboratively with counties to develop informational displays, the SOS office may be able to help local jurisdictions achieve greater levels of compliance with HAVA requirements. Ultimately, this should be in the best interests of both state and county election officials and could further their shared goals of providing voters with the best and most comprehensive information available on voting procedures and voting rights. This voter information display should be developed with a uniform format and include, at a minimum, the HAVA-mandated information requirements.

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### **RECOMMENDATION #6**

*We recommend the Secretary of State's office collaborate with counties to develop, produce and distribute a uniform voter information display for use in all Montana's polling places.*

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## CHAPTER IV – LATE REGISTRATION

### **Introduction**

The 2006 elections featured extensive changes made under the Help America Vote Act (HAVA), but were also the first time election officials dealt with other changes in elections laws. Foremost amongst these changes was the introduction of late registration. State elections laws were revised during the 2005 legislative session to allow voters to register or change registration details in the 30 days leading up to and including Election Day. Previously, voters wishing to change their records or unregistered individuals would be ineligible to vote unless they registered 30 days in advance of Election Day. Throughout this chapter we use the term ‘late registration’ to refer generically to all registration actions for both new and transfer registrants (although there is a distinction between the registration status of new and transfer registrants, the impact of late registration is the same in both cases, i.e. the ability to register and vote where this would previously not have been possible).

### **Late Registration and HAVA**

Late registration was not mandated under HAVA and is not a requirement imposed by the federal government. However, late registration many complement some of the changes made under HAVA, many of which were designed to remove obstacles to registration and voting. Another reason for addressing late registration in relation to HAVA election reform is the impact seen in the 2006 General Election. Considerable numbers of voters took advantage of late registration and this introduced an important new dynamic in the days leading up to and including Election Day. The decision to expand audit scope to include late registration was based on audit observations, interviews and data analysis pointing to this issue as a significant feature of recent election reform efforts.

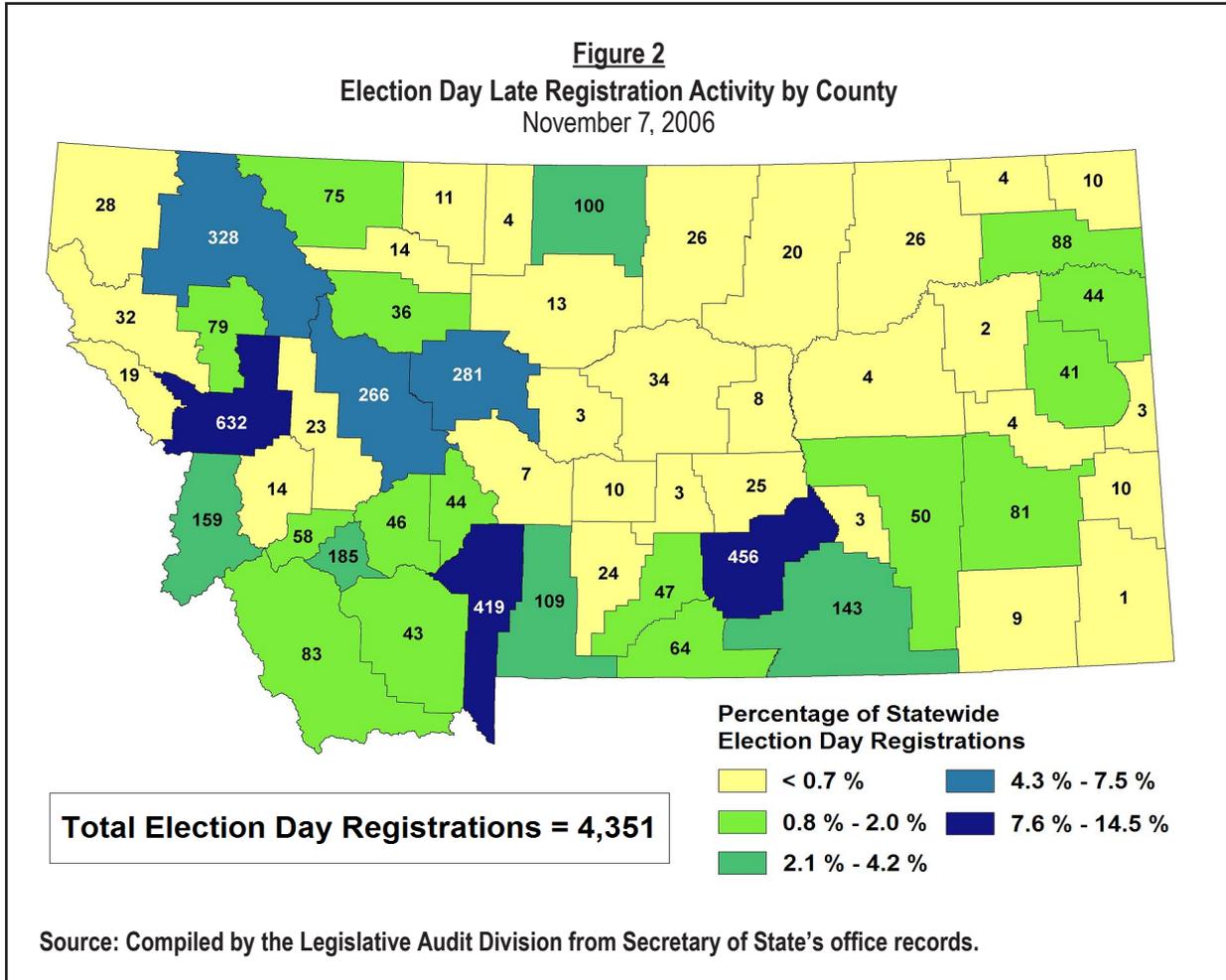
### **Late Registration Data**

Data showing the numbers of voters taking advantage of late registration is available from the statewide voter registration system (SVRS) and also from surveys conducted by the Secretary of State’s (SOS) office. SVRS data identified registered voters who were registered or had their registration details updated during the late registration period. Late registration began on October 11, 2006 and ran through Election Day (November 7th). For the middle two weeks of October registrations ran at an average of 100 – 150 daily across the state. In the final week of October registrations increased to an average of 200 per day. On the Monday before Election Day counties processed around 560 registrations. In total, 3,965 voters registered or changed registration details in the period up to November 6, 2006.

### **Election Day Registrations**

On Election Day itself, counties experienced increased numbers of late registrants. Data supplied by the SOS office shows around 4,350 people were either registered or changed their registration details on Election Day (this represents 52 percent of all late registration

activity). We used this data to determine what proportion of statewide late registration activity occurred in different counties. The following figure shows the proportion of statewide Election Day registrations for each county (shading) and also includes the actual number of county late registrants (numeric values).



One-third of Election Day registrations were concentrated in three counties (Missoula, Yellowstone and Gallatin). The numbers of Election Day registrations tended to vary according to the number of registered voters, so late registration activities were concentrated in counties containing more densely populated urban areas. Analyzing the number of Election Day registrations as a proportion of all registration activity shows the state's larger urban counties experienced the highest workload levels on Election Day as a result of late registration.

**Late Registration Impact on County Voter Turnout**

Combined SVRS and SOS office data shows approximately 8,295 individuals registered or changed registration details during the late registration period (up to and including Election

Day). At the statewide level, the inclusion of these additional eligible voters for the 2006 elections probably resulted in an increase in turnout of approximately 1.3 percent (from 62 percent to 63.3 percent). This calculation assumes that approximately 3,965 voters who registered prior to Election Day actually cast a ballot.

At the county level, the impact on turnout resulting from late registration shows some degree of variability. Impacts on voter turnout resulting from late registration appear to have been distributed fairly evenly across the state. The highest turnout effects were mainly seen in smaller rural counties, but there were some exceptions to this. Overall, analysis of county voter turnout tends to support the view that late registration has had a significant impact across the state and has not been limited to those counties where Election Day registration activity was actually highest.

### **County Election Officials Input on Late Registration**

We included various questions relating to late registration in our survey of county election officials. These questions addressed the planning and support available for late registration and how implementation affected county elections administration. The following table contains response data for two questions relating to late registration.

**Table 7**  
**Survey Responses Relating to Late Registration**

| <b>Question</b>  | <b>Response Options</b>  | <b>Response Percentage</b> |
|--|--|----------------------------|
| <b><i>How would you describe the guidance or advice provided by the Secretary of State's office relating to late registration?</i></b>                       | Excellent  | 0%                         |
|  | Good   | 22%                        |
|  | OK   | 37%                        |
|  | Poor   | 22%                        |
|  | Very Poor  | 20%                        |
| <b><i>Please indicate whether late registration and Election Day registrations had any impact on administration of elections in the following areas.</i></b> | County staff unable to address questions from precinct election judges                 | 78%                        |
|  | Additional unanticipated costs for staff and other resources                           | 73%                        |
|  | Long delays registering voters   | 58%                        |
|  | Expansion in the number of registered voters in the county                             | 48%                        |
|  | Other  | 30%                        |
|  | Higher occurrence of electoral fraud or other irregularities                           | 18%                        |
|  | Decrease in provisional votes cast in precincts  | 10%                        |
|  | Increase in the number of voters from groups with low rates of electoral participation | 10%                        |

Source: Compiled by the Legislative Audit Division from survey data collected from county election officials.

Responses indicate some level of dissatisfaction with the efforts of the SOS office to plan and implement changes in the registration process. Twenty-two percent of county election officials gave the SOS office a positive assessment in relation to the guidance and advice provided on late registration. County election officials identified their inability to deal with questions and inquiries from precinct poll workers as being the most common problem with late registration. The second most common problem identified was additional and unanticipated costs for staff and other resources used as a result of late registration. Survey returns show around 10 counties were required to keep courthouse polling places open late to accommodate late registrants. Additionally, elections staff dealing with late registrants would have been unavailable for some required duties, such as supervising and assisting absentee counting boards and preparing for collection and tabulation of election results.

### **Election Officials Foresee Further Issues with Late Registration**

Survey questions on late registration also addressed whether counties anticipated further problems and whether late registration could impact the number of polling places available. For future election cycles, around 75 percent of county election officials said they anticipated further problems resulting from late registration. This suggests county officials do not attribute the problems experienced in 2006 to unfamiliarity with late registration procedures. Around half of respondents indicated they expected to close or consolidate polling places as a result of the need to provide extra resources for late registration.

### **Validity of Election Day Registrations**

One frequently cited concern relating to Election Day registrations is the potential for the practice to increase the prevalence of electoral fraud. This concern results from the fact that voters transferring between different jurisdictions could use late registration to create a new registration record and vote more than once. Late registration allows voters who have an existing registration record to change their registration details if they move in or between counties or change their name. Potentially, this would allow a voter to go into a county election office on Election Day, request a transfer of registration, cast a ballot, and then travel to the precinct polling place they were originally registered in and cast a second ballot. To prevent this situation from occurring, election administrators are instructed to differentiate between late registrants with no existing registration record and those transferring from another jurisdiction or precinct. Late transfer registrants vote provisional ballots and these are only counted once the county can verify (after the close of polls), that they did not cast a precinct ballot under their previous registration record.

Over the late registration period, slightly less than one quarter of registrations involved updating registration records for transfer registrants. On Election Day, only 15 percent of registration activities involved updating existing records. For the 2006 elections, this would mean around 650 transfer registrants out of 4,350 late registrants should have been considered higher-risk registrations and received provisional ballots.

### **Secretary of State Developed Reconciliation Procedures for Late Registrants**

The SOS office issued election advisories to all Montana counties both prior to Election Day and following the close of polls regarding reconciliation procedures for late transfer registrants. These instructions outlined procedures counties should follow to ensure late

transfer registrants could not have more than one ballot counted. Procedures involved counties unsealing precinct registers to check whether or not an individual had cast a precinct ballot under their original registration record. If this had occurred, election officials were instructed not to count the ballot cast under the late transfer registration.

Testing of SVRS records for duplicate voting did not identify any instances of late transfer registrants voting more than once. SVRS testing did return several records showing voters with multiple voting attempts during the 2006 General Election, but only one of these voters appeared to be a late transfer registrant. For this individual, county controls appeared to have functioned correctly as only one of two requested absentee ballots was actually counted.

### **Fraud Risk for Late Registrations is Elevated but Remains Low**

Provided election officials follow correct procedures, there is no reason why voters would have a better chance of committing electoral fraud by adding or updating a registration record in the 30 days prior to an election. There is a possibility that late registration activity raises the overall level of confusion for election officials, which could contribute to an increased chance of errors occurring in the process. However, while this should be a matter of concern for election officials, there is no indication of widespread voter fraud problems with late registration. It does, however, indicate the continuing need for additional scrutiny of late registrations generally and late transfer registrants in particular.

### **Improved Planning for Late Registration is Necessary**

The introduction of late registration in Montana increased voter participation, but this success has not come without a price. Late registration has imposed additional administrative burdens, the majority of which have fallen on county election officials. Although late registration was used across the state, some counties experienced significant problems with the additional workload involved. The additional administrative burden of late registration also involves extra safeguards to prevent electoral fraud, which may be linked to the added confusion late registrants can introduce in the hectic days leading up to and including Election Day.

### **Election Officials Not Prepared for Additional Registration Activity**

Observations and documented reports from the 2006 elections indicated some counties experienced problems with the numbers of voters registering on Election Day and were not prepared for the workload this involved. This lack of preparedness was also evident at the state level, where there seemed to be some surprise among election officials that Election Day registration was used by so many voters. Some of this may be traced to the original legislation authorizing late registration and Election Day registration. Late registration was introduced in Montana during the 2005 legislative session under Senate Bill (SB) 302. The fiscal note attached to SB 302 does not identify any significant local government impacts resulting from the introduction of late registration and did not identify any fiscal impact associated with extending the registration period.

## Secretary of State's Office Should Lead Efforts to Manage Late Registration

Several changes could be considered, which may help counties in their administration of late registration. Our survey of county election officials provided some indication of where the SOS office could make some relatively simple changes in the way it provides information on late registration. County officials identified better public information regarding registration prior to Election Day as one way of helping counties deal with late registration. SOS could prioritize public information efforts in future election cycles to emphasize the convenience of registering prior to Election Day. Although the SOS office cannot use HAVA funding to support public education efforts relating to late registration, the office has a prominent public role leading up to Election Day and could use the many opportunities available to them to communicate information on late registration procedures to the general public. Regular training for county election officials and their staffs should also continue to focus on late registration activity as an area of elevated risk and emphasize the procedures counties need to follow to guard against duplicative or fraudulent registrations.

### **RECOMMENDATION #7**

*We recommend the Secretary of State's office lead efforts to mitigate the effects of late registration by:*

- A. *Focusing public education on registering prior to Election Day; AND*
- B. *Emphasizing late registration procedures and anti-fraud controls in training for county elections officials.*

## **Election Day Registration in Other States**

Information compiled by election study groups indicates six other states currently offer Election Day registration as an option. The other states offering Election Day registration are mainly smaller and more rural than average (Minnesota, Wyoming, New Hampshire, Idaho, Maine and Wisconsin). The following table summarizes information on Election Day registration activities in four other states and Montana for the 2006 General Election:

Comparison with Election Day registrations in four other states shows Montana's registration activity for the 2006 elections was significantly lower. This comparative data also raises the question of whether Montana can expect to see significant increases in Election Day registrations in the future. Several factors need to be taken into

**Table 8**  
**Election Day Registrations in Other States**  
**2006 General Elections**

| State         | Number of Election Day Registrations | Percentage of Registered Voters |
|---------------|--------------------------------------|---------------------------------|
| Idaho         | 54,531                               | 7.1%                            |
| Minnesota     | 292,168                              | 9.4%                            |
| New Hampshire | 25,796                               | 3.0%                            |
| Wisconsin     | 393,391                              | 12.8%                           |
| Montana       | 4,351                                | 0.7%                            |

**Source: Compiled by the Legislative Audit Division from state Secretary of State official election records.**

account regarding comparisons between Election Day registration activities in Montana and other states:

- ◆ Montana has only been allowing Election Day registration for one election cycle (2006). Some other states have been offering this option for 10 years or more and this has likely contributed to a growing familiarity among voters and, possibly, a growing reliance on Election Day registration. The comparatively low percentage of registered voters in Montana using the option could, therefore, be related to a lack of familiarity and could increase in future election cycles.
- ◆ Some other states using Election Day registration currently close the registration process 10 to 30 days prior to polling. If late registration is not an option prior to Election Day, the number of Election Day registrants may be artificially boosted. In Montana, voters could register right through the late registration period up to Election Day, so fewer voters would have needed to register on Election Day itself.
- ◆ Election Day registration in other states is available in polling places, rather than being restricted to county election offices as is the case in Montana. The widespread availability of the option in locations close to voters' residences is probably part of the explanation for higher levels of Election Day registrations in other states.

It is difficult to predict whether Election Day registration in Montana is likely to result in more voters using this option, but based on experiences of other states it seems reasonable to assume this may be the case. Because Election Day registration in Montana is restricted to county election offices, and voter registration levels are already high it may be unlikely that the levels of activity seen in some other states will be repeated. However, it should be expected that there will be increases over the current levels of activity as more voters become aware of the option. Even if Montana's Election Day registration activity only reaches the minimum level seen in other states, this could mean up to 20,000 voters being processed at county election offices in future cycles.

Any overall increases in late registration volumes or changes in the composition of the late registrant population could be problematic for election administrators. Given the problems evident during the 2006 election cycle, there is a potential for further issues to arise if late registration volumes increase. The experience of other states suggests several courses of action may have to be considered, depending on trends observed over the next few election cycles. These would include rolling-back late registration to some point prior to Election Day, addressing the resource and other needs of counties to help them manage late registration procedures better, or moving to a precinct-based process.

### **Increase in Election Day Registrations May Require Further Legislation**

The SOS office can play an important role in monitoring trends in late registration, helping counties manage the administration of this process, and, where necessary, pursuing

statutory or other changes to address any future issues. In the event of continuing problems with county administration of late registrants, the SOS office could consider the need for rolling-back the late registration period to some point prior to Election Day. This option would relieve some of the stress on county election officials produced by dealing with both registration and voting on Election Day itself. Another option could involve the SOS office working with counties to examine late registration procedures and identify areas where improvements could be made. Addressing the need for investments or administrative improvements could allow counties to continue providing late registration on Election Day without any negative effects on regular voting activities. A third option could involve addressing the need to move towards a precinct-based system of late registration. This option would only be applicable where there is a significant increase in late registration volumes that could not be efficiently or effectively processed in county election offices. As used in some other states, precinct-based late registration would focus activities in polling places, leaving county election officials with more time to administer regular voting activities.

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**RECOMMENDATION #8**

*We recommend the Secretary of State's office monitor ongoing trends in late registration to determine the impacts on elections administration and, if needed, mitigate future impacts by:*

- A. *Rolling-back the late registration period to some point prior to Election Day;  
OR*
  - B. *Providing additional resources or guidance to maintain current levels of effort in counties; OR*
  - C. *Expanding late registration to a precinct-based procedure.*
-

## CHAPTER V – VOTING SYSTEMS

### Introduction

A voting system is defined in Montana statute as “any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper or non-paper ballot.” The Help America Vote Act (HAVA) defines voting systems in a similar manner to include any equipment used to define ballots, cast and count votes, report and display results, and maintain and produce audit trail information for elections.

Poor functionality, unacceptable and inconsistent error rates, and technological obsolescence in voting systems equipment was one of the major driving forces behind HAVA election reform efforts. In addition to mandating the replacement of several different types of voting systems equipment, HAVA also contains provisions designed to ensure a greater level of uniformity in the way voting systems are operated.

### **HAVA Voting Systems Requirements**

HAVA mandates several changes in voting systems, which are summarized as follows:

- ◆ **Replacement of punch card and lever voting machines** – HAVA requires states using punch card or lever voting machines replace this type of equipment. HAVA established a payment program for states using these types of equipment. State and/or local election officials were allowed to choose which type of voting systems equipment to use instead of the obsolete punch card and lever systems.
- ◆ **Ballot verification** – voting systems should allow voters to verify their vote is valid and will be counted. Voters should be allowed to check their ballot for errors and request a replacement ballot if they make a mistake. HAVA also requires voting systems have the ability to identify over-votes (voting for more than one candidate for a single office). However, states using systems which do not allow for identification of over-votes can substitute public education efforts rather than upgrade systems.
- ◆ **Error rates** – state voting systems must comply with standard error rates established by the Federal Election Commission.
- ◆ **Audit capacity** – the system must produce a permanent paper record, which can be used in an audit capacity in the event of a recount.
- ◆ **Accessibility for individuals with disabilities** – every precinct should have at least one voting machine accessible for individuals with disabilities (see Chapter VII addressing voting accessibility issues).
- ◆ **Alternative language accessibility** – the system should provide alternative language accessibility as required under the Voting Rights Act.
- ◆ **Uniform definition of what constitutes a vote** – states are required to establish uniform and nondiscriminatory standards defining what constitutes a valid vote and what will be counted as a vote for each category of voting system used in the state.

Montana's voting systems already met several of these requirements (for example, all voting systems use paper ballots and therefore already meet the audit capacity requirement). Other requirements were met through recent changes in state law (for example, Montana statute was revised to provide a uniform definition of what constitutes a valid vote). For other voting systems requirements, we conducted specific testing and analysis to determine the implementation status of these HAVA mandates in Montana. This chapter includes audit findings and recommendations relating to the following aspects of voting systems:

- ◆ Replacement of obsolete voting systems.
- ◆ Changes in Montana voting systems to allow for ballot verification by voters.
- ◆ Assessment of error testing procedures for voting systems.

## **Replacement of Obsolete Voting Systems**

At a minimum, HAVA requires states to replace obsolete voting systems technologies where they were still being used. The Act targets those types of voting machines with higher than normal error rates and which have been associated with poor performance. Replacement of the worst voting systems with more reliable equipment was a first step in ensuring some level of uniformity existed between states.

Prior to or coinciding with passage of HAVA, the majority of Montana counties already used either optical scan or hand count voting systems. Both these methods were and still are permissible under the terms of the Act and there is no requirement for the state to replace these systems. Six Montana counties were using punch card systems, which did require action under HAVA.

## **Montana has Implemented HAVA Voting Systems Replacement**

Montana was required to ensure voting systems used in these six counties were replaced prior to January 1, 2004. To effect these changes, the 58th Legislature passed House Bill 87, which revised statute to prohibit the use of punch card voting systems within the state. Under the terms of Montana's state HAVA plan, the Secretary of State's (SOS) office worked with counties to ensure punch card systems were replaced. Subsequent amendments to the state plan indicated the SOS office assisted five counties in the purchase of optical scan systems (the remaining county had already replaced the punch card system and was reimbursed).

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### **CONCLUSION**

*The Secretary of State's office and county election officials have ensured obsolete voting systems have been replaced in accordance with the terms of the Help America Vote Act.*

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## **Changes in County Voting Systems**

Voting system changes mandated under HAVA have resulted in further progress towards modernizing and upgrading elections equipment being used in many states. Changes in voting systems have been occurring over the past two decades as more states have adapted

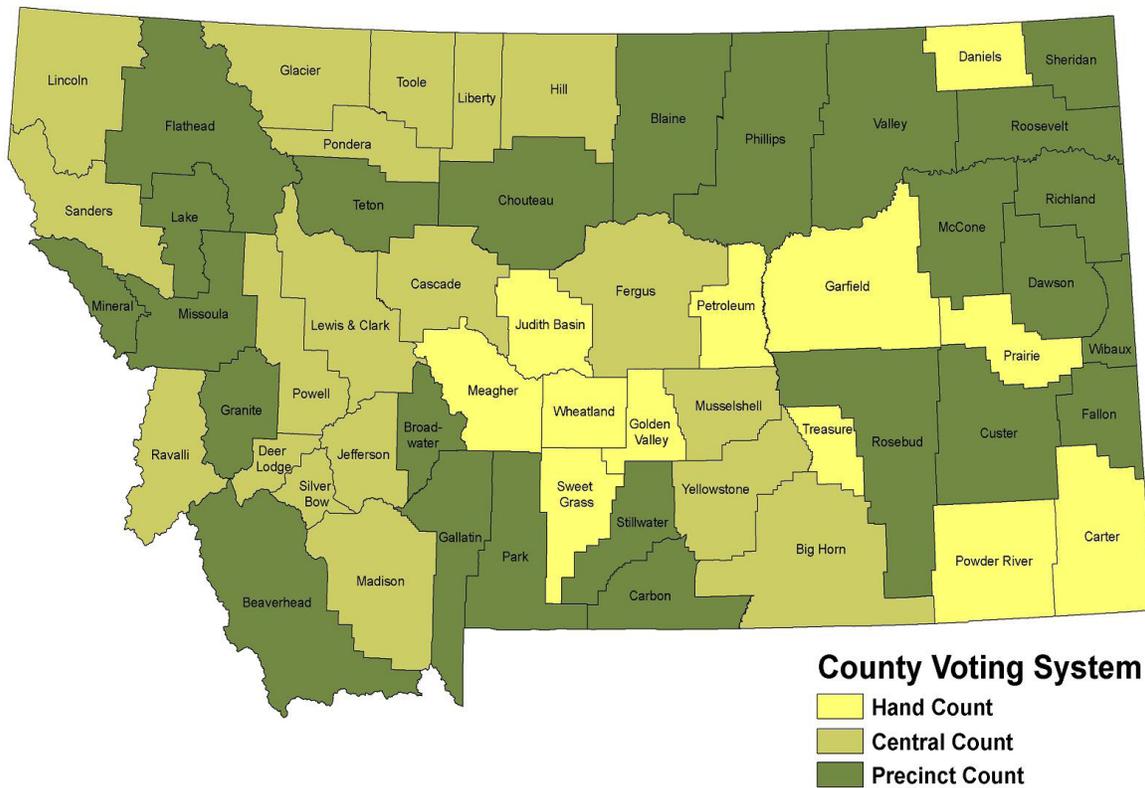
new technologies to allow for greater polling place efficiency and faster vote tabulation. Since the early 1980s there has been a steady movement away from mechanical systems such as lever and punch card machines and traditional hand count or paper ballots. These legacy technologies are increasingly being replaced by either optical scan or electronic systems.

With the changes in voting systems mandated under HAVA, Montana has achieved a greater level of uniformity in the types of processes and equipment used in elections. However, there are still important differences between the voting systems currently in use. In terms of voting systems, the state now supports three main types, discussed as follows:

- ♦ **Hand Count** – the hand count voting system is also often referred to as the paper ballot system. This system does not use any type of automation to count or tabulate ballots. Voters mark traditional paper ballots, which are deposited and then collected for centralized counting.
- ♦ **Central Count Optical Scan** – the optical scan system relies on electro-mechanical technology to scan pre-formatted and standardized paper ballots. The optical scan machine counts a vote when a voter fills-in the oval with a pencil to indicate a preference. The central count variant of this technology uses a single point of collection for all ballots within a county (usually the county courthouse). All ballots are scanned and counted after the close of polling. These systems cannot, however, be used to alert a voter to a voting error, as the scanning takes place centrally following the close of polls and not in the precinct.
- ♦ **Precinct Count Optical Scan** – this variant of the optical scan system uses the same technology as the central count, but counties deploy multiple scanning units to different precincts. Voters also use standardized ballots, but they deposit the ballot in a scanner within the precinct. The advantage of this system is that the precinct counter can detect voter errors and alert the voter before they leave the polls, thus allowing electors the opportunity to correct mistakes.

Twelve Montana counties use hand counts of traditional paper ballots. Nineteen counties use central count optical scan systems and twenty-five counties are now using the precinct count optical scan systems. County voting systems are shown in the following figure.

**Figure 3**  
**Montana County Voting Systems by Type and Sub-Type**  
**November 2006 General Election**



Source: Compiled by the Legislative Audit Division from Secretary of State's office records.

The most common errors in the voting process are voting for more than one candidate for a single office (over-vote), and neglecting to make any vote for a given race (under-vote). Either over or under-votes can be conscious choices on the part of voters. However, both over and under-votes can also occur because of systemic error, i.e. problems with voting systems (as demonstrated in Florida in the 2000 elections and problems with punch card voting machines). The most common method of quantifying voting system errors is known as the residual vote. The residual vote is the combined total of votes that were not counted (both over and under-votes), and is calculated as the difference between the number of voters casting ballots in an election and the actual number of votes received by candidates.

### **Analysis of Residual Voting Data**

Residual vote trends in Montana elections were analyzed using data compiled by the SOS office for statewide elections since 1992. For statewide races and federal contests between 1992 and 2006 the rate of residual voting shows some degree of volatility. However, the

interesting feature of this data is the decline in the residual vote for the 2006 general elections, where only 1.15 percent of all votes cast were uncounted. This trend is illustrated for federal elections in the following table.

**Table 9**  
**Residual Vote Trend in Montana Federal Elections**  
**1992 through 2006 Election Cycles**

| <u>Election Year</u> | <u>United States Senate</u> |                   | <u>United States House</u> |                   |
|----------------------|-----------------------------|-------------------|----------------------------|-------------------|
|                      | <u>Residual Votes</u>       | <u>Residual %</u> | <u>Residual Votes</u>      | <u>Residual %</u> |
| <b>1992</b>          | --                          |                   | 13,829                     | 3.31%             |
| <b>1994</b>          | 9,068                       | 2.52%             | 7,322                      | 2.04%             |
| <b>1996</b>          | 9,742                       | 2.33%             | 12,806                     | 3.07%             |
| <b>1998</b>          | --                          |                   | 7,182                      | 2.12%             |
| <b>2000</b>          | 6,315                       | 1.51%             | 7,395                      | 1.77%             |
| <b>2002</b>          | 13,735                      | 4.04%             | 8,951                      | 2.63%             |
| <b>2004</b>          | --                          |                   | 11,866                     | 2.60%             |
| <b>2006</b>          | 4,556                       | 1.11%             | 4,936                      | 1.20%             |

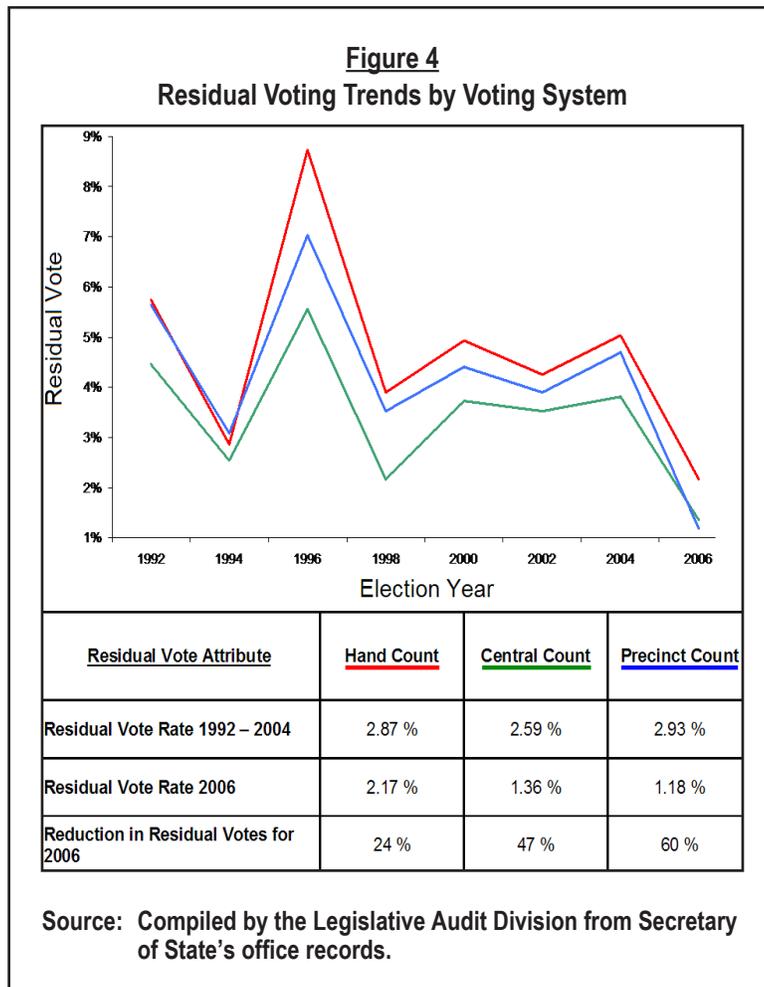
**Source: Compiled by the Legislative Audit Division from Secretary of State's office records.**

The most obvious potential cause of the reduction in the residual vote for the 2006 elections was the competitiveness of the U.S. Senate race in this year. This race was carried with a relatively narrow margin of victory, indicating a highly competitive race that likely drew more committed voters to the polls and where there would be a reduced incidence of under-voting. Analysis of the residual vote percentages and other variables for federal and other statewide elections shows that although the competitiveness of an election is an important factor in reducing the residual vote, it is not the sole determinant. Another way of demonstrating this is to look at the 2006 U.S. House race, which was less competitive (the margin of victory in this race was over 80,000 votes or nearly 20 percent of the total). If the margin of victory accurately mirrored the residual vote, we should have seen an increased residual vote in the House race. However, the house residual vote also saw a dramatic decline in 2006, suggesting that other factors were important.

### **Voting Systems and the Residual Vote in 2006**

There are many factors that could have affected the residual vote in 2006. In relation to HAVA, the two most important factors were changes in voting systems and the public education and voter information efforts conducted by SOS and local election officials. To determine whether voting systems played a role, we analyzed county residual vote levels. This approach allows us to distinguish between counties that use different types of voting

systems (hand count, central count optical scan, or precinct count optical scan systems). The following figure shows the average residual vote rate by county according to the voting system they used in the 2006 elections.



As shown, both the central count and precinct count optical scan counties experienced greater reductions in residual votes as compared with counties using hand counts. Counties using precinct counters also experienced greater reductions in residual votes when compared with counties using the central count optical scan system. These results lend credence to some academic studies of voting systems at the national level, which suggest precinct counters are more effective at reducing residual votes when compared with the central count system. More generally, the ability of the precinct counter system to actually identify voting errors prior to casting the ballot intuitively suggests there should be some associated reduction in the number of voting errors.

Changes in election administration resulting from HAVA included the introduction of new precinct voting equipment and high profile efforts by election officials to educate the voting public about voting error and their ability to request replacement ballots. In combination, it is reasonable to suggest these changes did impact the level of residual voting in the state. While it may not be possible to determine how much influence changes

in equipment/technology had as opposed to the public education efforts, there is evidence in county election returns suggesting voting systems changes resulted in reduced number of residual voters and a clearer expression of voter intent.

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**CONCLUSION**

*Voter education efforts and voting systems changes introduced under HAVA contributed to a reduction in residual votes and a clearer expression of voter intent for the 2006 federal elections.*

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## **Secretary of State Precinct Counter Purchase Program**

Montana elected to use some of the federal HAVA funding allocation to encourage purchase of precinct counter optical scan systems. This purchase program involved a 50:50 funding match for counties that wanted to purchase precinct counter technology. The use of HAVA funding to encourage the move to precinct counter technology has promoted the use of these systems, but has also resulted in another difference between voters in different counties. The Montana electorate is now almost evenly divided by the ability of voters to receive a timely alert if they make a voting error (either by under or over-voting).

## **Potential Impacts of Voting Systems on Montana Elections**

Due to the variance in observed residual vote levels for counties using different types of election equipment, there could be some impact on elections as a result of differences in voting systems. For the 2006 federal elections, results for the United States Senate and House races were recalculated to determine whether voting systems differences could have impacted the results. In both cases, the type of voting systems being used by counties would not have affected the actual result of these races. Given the potential for voting systems variations to impact residual voting levels, we also analyzed margins of victory for Montana legislative elections. Results from the 2006 Montana House of Representatives show that results in three house districts could have been impacted by differences in voting systems.

It should be emphasized that there is no evidence changes in voting systems would have produced a different result in any legislative races. However, the fact that voters in these races were participating using voting systems which are different from those used in some other counties highlights an important disparity. Essentially, the chances of having your voting intent accurately expressed vary depending on which county the ballot is cast in. Voters residing in counties using precinct count voting systems have a slightly better chance of having their voting intent accurately expressed.

## **Two-Tier Structure for Vote Counting Exists in Montana**

Disparities between county voting systems have always existed, as have the impacts of differences in the residual voting levels attributable to these systems. HAVA succeeded in prohibiting lever and punch card voting systems, but the availability of HAVA funds for precinct counter purchases has meant a continuation of what amounts to a two-tier structure for voting system in the state. This disparity has produced inequities between voters in different counties. These inequities are significant to the electoral process

regardless of whether any specific degree of variation can be assigned to residual voting levels for different voting systems. Currently, around half of Montana's 650,000 voters cast ballots using systems that can identify errors and allow the opportunity to change the ballot. The other half are not afforded this opportunity and, therefore, have an increased chance their intent will not be clearly expressed at the polls.

### **Common Standard for Voting Systems**

Under HAVA, states are required to prohibit use of some voting equipment and adopt voting systems that allowed voters to identify and correct errors on their ballots. Montana has met the first part of this HAVA requirement, through replacement of obsolete systems. As a paper ballot state, Montana was allowed to meet the second requirement through a public education campaign on identification and correction of ballot errors. Public education efforts could, therefore be used as a substitute for the controls provided by precinct count and similar systems. For the Montana counties that did not participate in the precinct counter purchase program, public education efforts were the sole means of complying with these HAVA requirements.

## Survey Results Support Precinct Count Benefits

We asked county officials to provide input on changes in voting systems resulting from HAVA, including the efficacy of public education efforts and precinct counter purchases. Results for selected questions are included in the following table.

**Table 10**  
Survey Responses Relating to Voting Systems Changes

| Question  | Response Options                             | Response Percentage |
|---|--|---------------------|
| <b><i>Do you think public education efforts have resulted in lower rates of under and over-voting and other voting errors?</i></b>                          | Substantially lower rates of error           | 0%                  |
|   | Slightly lower rates of error                | 5%                  |
|   | No significant effect on error rates         | 54%                 |
|   | Probably increased error rates               | 5%                  |
|   | Don't Know                                   | 36%                 |
| <b><i>In your experience has the introduction of precinct counting equipment helped to reduce the number of over and under-votes cast in elections?</i></b> | Yes - substantial reduction in voting errors | 32%                 |
|   | Yes - slight reductions in voting errors     | 32%                 |
|   | About the same                               | 21%                 |
|   | No - increase in voting errors               | 10%                 |
|   | Don't Know                                   | 5%                  |
| <b><i>In your experience has the introduction of precinct counting equipment made administration of elections more efficient?</i></b>                       | Yes  | 84%                 |
|   | No   | 16%                 |
|   | Don't Know                                   | 0%                  |

Source: Compiled by the Legislative Audit Division from survey data collected from county election officials.

For those counties using hand counts and central counts, the SOS office was required to meet HAVA provisions relating to voting errors by conducting public education/voter outreach efforts. Survey responses show county election officials were generally neutral regarding these efforts and do not think there has been a significant impact on error rates. Election officials in counties using precinct counter voting systems were more certain regarding the impact of these systems on reducing voter errors. Around two thirds of respondents said precinct counters reduced voter errors either significantly (32 percent) or slightly (32 percent). Twenty-one percent of respondents saw no change in voter error and ten percent thought errors may have increased. A larger majority of respondents supported the view that precinct counter equipment has improved the efficiency of election administration (84 percent).

## **Financial Concerns Prevent Counties from Adopting New Voting Systems**

Survey responses also show the biggest concern for counties that did not make the change to precinct counting was the lack of county financial support for the additional expenses involved in buying the precinct count equipment. Nearly three-quarters of respondents (73 percent) indicated a cost/benefit analysis did not support the additional expense and half said there was no county funding available to match the HAVA funds. Survey responses appear to indicate that the transition to precinct counter voting systems will likely remain incomplete where barriers exist at the local level.

## **Secretary of State's Office Should Plan Transition to Common Standard for Voting Systems**

Montana has not moved towards a common standard for voting systems and has instead relied on an approach where counties could choose to participate in a program to upgrade equipment. The SOS office used available HAVA funding to provide a match for county investments in new technology, but the program was based on voluntary participation and was always going to be reliant on the availability of local funding. The result of this approach is a variety of different standards for voting systems. The efforts of state and local election officials to educate the voting public regarding voting errors should not be overlooked and have probably had some impact on reducing residual votes, but it is not clear whether these activities can or will be conducted on a long-term basis.

The SOS office has both a unique perspective on the state's electoral process and a unique responsibility under state law for ensuring a degree of uniformity between counties. The office is also responsible for effectively implementing federal elections laws, including HAVA. The issue of disparities in voting systems demands a uniform response and a coordinated approach, which only the SOS office can provide. Applying common standards to county voting systems will ensure all votes have an equal chance of being counted regardless of where they are cast.

Transitioning to a common standard for voting systems will involve a long-term commitment, whereas HAVA set short-term deadlines and paid limited attention to future needs. The SOS office should begin developing a long-term approach to actively managing the assessment and deployment of new voting technologies. The office should begin by prioritizing availability of remaining HAVA funds for the purposes of assisting counties in purchases of precinct counter equipment. Approximately \$850,000 in HAVA grant funding has already been expended for precinct counter purchases. We estimate an additional \$790,000 in matching grants for counties would be required to provide precinct counting capabilities in all polling places. Matched by counties at the current 50:50 ratio, this would mean total additional investments of approximately \$1.57 million. Ultimately, counties retain the right to determine whether to make these investments and some local government will prefer to defer decisions pending further developments in voting systems technology. However, we believe the SOS office should continue to actively assist those counties wishing to transition to systems offering better degrees of accuracy.

Establishing a level playing field for voting systems is accomplished in part through the Montana state HAVA plan, which budgeted funds for precinct counter purchases. The SOS office can continue to pursue a common technological standard in voting systems as a strategic priority by establishing goals and objectives relative to the replacement of legacy voting systems and the introduction of next generation systems. This could involve setting targets for reducing the numbers of counties using systems with significantly different capabilities and assessing progress towards these goals. Another consideration could be the need to establish defined timeframes for technical obsolescence of particular systems. For example, advances in electronic voting systems may mean optical scan systems will be technically obsolescent within 10 years and no further purchases should be considered after a defined period of time. Given the importance and complexity of these issues, it may also be appropriate for the SOS office to seek further legislative guidance relative to voting systems.

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**RECOMMENDATION #9**

*We recommend the Secretary of State's office continue its efforts to transition Montana counties to a common standard for voting systems by:*

- A. Prioritizing availability of remaining HAVA funds for upgrading county voting systems equipment; AND*
  - B. Establishing a common technological standard for voting systems as a strategic priority for the office; AND*
  - C. Determining the need for further legislative guidance relative to voting systems.*
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## **Voting Systems Error Testing**

Both the growing variety and technological sophistication of voting systems pose challenges for election administrators. Unlike some other states, however, Montana has not moved towards adoption of paperless electronic voting systems. These systems have been subject to intense scrutiny regarding their security and reliability, and the ability to audit results and test for errors. Although Montana has so far avoided many of these problems, vote counting in many counties still relies on the accuracy of different types of voting equipment.

### **Montana Statute Establishes Voting System Testing Standards**

HAVA established requirements for minimum error rates for voting systems and Montana elections laws also outline testing requirements for equipment. These statutory standards highlight the fact that regular testing of voting systems components is an essential feature of any well-maintained electoral process. Section 13-17-212, MCA, requires the SOS office ensure at least 10 percent of the state's voting systems are tested and certified each calendar year.

Review of SOS office voting system testing procedures showed the office developed and implemented procedures for calendar year 2006. These procedures involved obtaining and reviewing testing and certification documents submitted by four different counties.

Counties submitted signed certifications showing testing was performed on various types of voting equipment, including Automark assisted voting machines and optical scan precinct counter and central counter ballot scanners/tabulators.

### **Testing Procedures Do Not Ensure Statewide Coverage**

State law requires the SOS office ensure at least 10 percent of the state's voting systems have been randomly tested and certified on an annual basis. SOS has addressed this requirement by developing a process for randomly reviewing testing and certification documents from counties. The SOS office has interpreted statutory guidance to mean testing of the totality of the state's voting systems, rather than testing applicable to each type of different system. This approach provides a good level of testing coverage, but may exclude some less common types of systems from testing or result in some systems not meeting the 10 percent threshold.

To properly test functionality for the state's voting systems, the SOS office should develop procedures based on the sub-populations of different types of systems used around the state (this would include Automarks, M-100 Precinct Counters, M-650 Central Counters and other types of central count tabulators).

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#### **RECOMMENDATION #10**

*We recommend the Secretary of State's office revise voting system testing procedures to ensure all the different types of elections equipment used in the state are included in the office's random testing procedures.*

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## CHAPTER VI – PROVISIONAL AND ABSENTEE VOTING

### **Introduction**

Civic participation has traditionally been a guiding principle of the electoral process. The process of traveling to and casting a ballot in a local polling place along with other voters registered in the precinct is a shared experience for all citizens. While there are many benefits in this shared civic experience, there have also been recent attempts to introduce flexibility and choice in the traditional polling place voting model. The Help America Vote Act (HAVA) requires all states provide provisional voting, which provides voters a fail-safe voting method if there is some kind of problem with their registration status. HAVA also contains provisions designed to facilitate absentee voting for certain voters, contributing to efforts to make voting available outside of the local precinct polling place.

Both provisional and absentee voting are designed to make the process easier, more accessible to more voters and, ultimately, to increase participation. Montana elections laws have been revised in recent years to introduce the concept of provisional voting and to widen the availability of absentee voting. Changes relating to provisional voting were introduced to comply with HAVA requirements, but expanded availability of absentee voting is unrelated to the act. Montana has joined other states in allowing ‘no excuse’ absentee voting and has seen a substantial increase in absentee ballots. As is the case with late registration, changes in absentee voting procedures have introduced an important new dynamic to Montana elections and were addressed in our review of HAVA.

### **Provisional Voting**

HAVA established provisional voting to allow individuals claiming to be legally registered to cast a provisional ballot. Provisional voting can be used in a variety of circumstances where there is some question regarding the registration status of a voter (for example, a voter claiming to be registered whose name does not appear on the register can cast a provisional ballot). Provisional ballots are segregated from regular ballots and are only counted where the registration status of the individual can be positively verified following the close of polls. HAVA also requires states to provide a means for individuals who cast provisional ballots to ascertain whether the vote has been counted. HAVA specifies a free access system must be available for this process.

### **Provisional Voting Data for Montana Elections**

Provisional voting was introduced for the 2004 General Election in Montana. The Secretary of State’s office submits information on provisional voting to the federal government following each federal election in the state. The following table shows the number of provisional votes received and counted for the 2004 and 2006 general elections.

**Table 11**  
**Provisional Voting Data**  
**2004 and 2006 Federal Elections**

| Election Year                      | <u>2004</u> | <u>2006</u> |
|------------------------------------|-------------|-------------|
| <b>Provisional Votes Cast</b>      | 623         | 2,242       |
| <b>Provisional Vote Rate</b>       | 0.1%        | 0.55%       |
| <b>Provisional Votes Counted</b>   | 378         | 2,133       |
| <b>Provisional Vote Count Rate</b> | <b>51%</b>  | <b>95%</b>  |

**Source: Compiled by the Legislative Audit Division  
from Secretary of State's office and Election  
Assistance Commission records.**

There was a significant increase in the number of provisional votes cast between the 2004 and 2006 elections. Not only has the provisional voting rate increased, the count rate for provisional ballots has also increased from 51 percent to 95 percent. These changes in provisional voting data are likely linked to three developments seen in the 2006 elections:

- ♦ **Absentee voting** – there was a large increase in the number of absentee voters in 2006 and a corresponding increase in the number of absentee voters attempting to vote in polling places (see sections below). A proportion of the increase in provisional voting was likely generated by absentee voters being issued provisional ballots in polling places, pending determination of the status of their absentee ballots.
- ♦ **Late registration** – around 4,000 voters registered or changed registration details on Election Day as a result of the introduction of late registration (see Chapter IV). Some of these voters may have been provisionally registered, contributing to the increased number of provisional ballots issued. In addition, the availability of late registration at election administrator's offices likely decreased the number of unregistered individuals voting in precincts using provisional ballots. In 2004, these provisional ballots for unregistered voter would have been rejected, contributing to the lower count rate as compared with 2006.
- ♦ **Late poll closure** – more than 10 counties reported keeping polls open after 8 p.m. on Election Day to deal with late registration voters at election administrator's offices. These voters were issued provisional ballots as required under HAVA and this likely contributed to the increase in provisional ballots issued.

## **Election Observations and Survey Results**

Observations of voting during the 2006 General Election by audit staff did not identify any specific issues with provisional ballots. Observational data indicated use of provisional

ballots in polling places was limited, provisional ballots were generally being issued in appropriate circumstances, and the majority of poll workers had a good knowledge of provisional voting procedures.

The generally positive picture of provisional voting provided by our Election Day observations was confirmed in survey responses from county election officials. Approximately 60 percent of county election officials have a positive view (rated as good or excellent), of the efforts of the Secretary of State's (SOS) office to provide information and advice on provisional voting. Survey responses also show the majority of county election officials believe there is some level of awareness among voters in relation to provisional ballots. In relation to provisional ballot issuance, survey responses were almost completely uniform regarding the issuance of either a regular or provisional ballot in different circumstances. This suggests there is a good level of understanding among county officials regarding the appropriate use of provisional ballots. Most of the counties also provided voters with multiple means of contacting election administrators regarding their provisional ballots. In nearly all cases, counties appear to have taken actions which allow for a free access system to provisional ballot information for voters.

### **Provisional Voting is Working Well in Montana**

Review of voting data, elections observations and survey of county elections officials suggest there have been no significant problems with the introduction of HAVA provisional voting requirements in Montana. The relatively low incidence of this type of voting has probably contributed to the lack of concerns over its use, as has a good level of uniformity among election administrators regarding provisional voting requirements. The number of provisional votes cast in 2006 elections increased substantially over the previous election cycle, but there was a corresponding increase in the rate at which these provisional votes were verified and counted.

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#### **CONCLUSION**

*The provisional voting requirements of the Help America Vote Act have been successfully introduced in Montana and appear to be functioning as intended.*

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### **Absentee Voting**

Changes in Montana's absentee voting provisions date to the late 1990s when certain restrictions on voting absentee were lifted. Montana joined other states in introducing 'no excuse' absentee voting that allows any voter to request an absentee ballot regardless of whether they have a justification for not voting in a polling place. These changes are often viewed as a means of addressing declining participation by making it easier for people to cast votes outside of the normal polling place procedures. Subsequently, Montana also changed state law to establish permanent absentee voting, which allows a voter to elect to receive an absentee ballot for every election without specifically requesting the absentee option for each electoral event.

Although not directly related to HAVA, moves towards an expansion of absentee voting have been informed, at least in part, by the motives driving federal elections reform; namely, attempts to increase voting accessibility and participation. Absentee voting has grown significantly in popularity over the past few election cycles and has also, become a significant factor in any analysis of election reform efforts linked to HAVA.

### Absentee Voting Data

HAVA mandates collection and reporting of absentee ballot data by all election jurisdictions for each federal election cycle. As a result, there is good information available for the last two federal elections (2004 and 2006), but prior to these years data for absentee ballots requested, received and counted are harder to find. Absentee ballot data was collected for the 2000, 2004, and 2006 elections and is shown in the following table.

**Table 12**  
**Montana Absentee Voting Data**  
**2000, 2004 and 2006 Elections**

| Election Year | Absentee Votes Counted | Polling Place Votes Counted | Absentee Percentage | Absentee Ballot Count Rate |
|---------------|------------------------|-----------------------------|---------------------|----------------------------|
| 2000          | 64,723                 | 356,193                     | 15%                 | NA                         |
| 2004          | 99,430                 | 356,666                     | 22%                 | 95%                        |
| 2006          | 119,894                | 291,167                     | 29%                 | 92%                        |

Source: Compiled by the Legislative Audit Division from Secretary of State's office and Election Assistance Commission records.

As shown, there has been a significant increase in absentee voting between 2000 and 2006. In the 2006 elections nearly one third of the electorate voted absentee, rather than casting a ballot in a polling place. The number of absentee voters has nearly doubled since 2000 and as a result absentee voting procedures now constitute a significantly more important feature of Montana's elections process than was previously the case.

Absentee ballots show a drop-off rate in terms of the number of ballots requested (equivalent to turnout), the number received (ballots cast), and the number counted (actual votes). For the state as a whole, there has been a decline in the absentee ballot count rate (proportion of requested ballots that are actually counted) between the 2004 and 2006 elections. Basically, this means fewer electors requesting absentee ballots are actually returning them and having them counted.

### 2006 General Elections Observations

Observations of the 2006 General Election by audit staff included assessment of the numbers of absentee voters visiting polling places on Election Day in an attempt to cast polling place ballots. Our observations showed around 5,000 absentee voters went to

polling places on Election Day rather than mailing/delivering an absentee ballot. Of this total, approximately 60 percent (roughly 3,000 voters) did not have an absentee ballot, either because they had claimed not to have received one in the mail or ever signed up for an absentee, or because they had misplaced, spoiled or destroyed their original absentee ballot. The remaining 40 percent (around 2,000) brought their absentee ballots with them to the polling place.

For those absentee voters with no ballot there appeared to be a good level of uniformity in polling place procedures. Our observations indicated these individuals were either provided with a provisional ballot to vote, or poll workers made an effort to determine whether an absentee ballot had been received before making a decision on issuing a ballot. Ideally, all voters marked as absentee should be required to cast a provisional ballot, which can be segregated and verified at a later point to ensure double-voting does not occur. Our observations indicate this may not have occurred in every circumstance, but all indications suggest poll workers were following the correct procedures and issuing provisional ballots.

Less uniformity was observed in how poll workers processed absentee voters arriving at a polling place with their original ballot. Around 43 percent of these voters were informed they could not vote the ballot in the precinct and were instructed to go to the county election administrator's office to vote their ballot. Remaining voters were permitted to cast their ballot in the precinct (it appeared most were allowed to deposit the ballot in the regular manner). From our observations, there did not appear to be anything distinguishing these absentee voters, other than the fact they attempted to vote in different polling places. Where some voters are allowed the option of voting in the precinct, while others are prevented from doing so, there is a risk that some ballots may not have been counted.

### **Survey Results Reveal Inconsistencies in Absentee Voting Procedures**

We asked county election officials several questions relating to absentee voting. The survey included questions relating to the instructions county election officials provided poll workers on dealing with absentee voters in polling places. Survey responses for selected questions are summarized in the following table.

**Table 13**  
**Survey Responses Relating to Absentee Voting**

| Question   | Response Options   | Response Percentage |
|--|--|---------------------|
| <b><i>What instructions did you give to chief election judges regarding absentee voters who had not received ballots?</i></b>  | Send voter to county chief election administrator's office   | 10%                 |
|  | Allow the voter to vote a provisional ballot in the precinct | 65%                 |
|  | Allow the voter to vote a regular ballot in the precinct     | 5%                  |
|  | Call election administrator to determine status of ballot    | 20%                 |
| <b><i>What instructions did you give to chief election judges regarding absentee voters who had lost or spoiled their absentee ballot?</i></b>   | Send voter to chief election administrator's office          | 7%                  |
|  | Allow the voter to vote a provisional ballot in the precinct | 63%                 |
|  | Allow the voter to vote a regular ballot in the precinct     | 10%                 |
|  | Call election administrator to determine status of ballot    | 15%                 |
|  | Other  | 5%                  |
| <b><i>What instructions did you give to chief election judges regarding absentee voters who came to polling places with their absentee ballot and wanted to vote it in the precinct?</i></b> | Send voter to county chief election administrator's office   | 7%                  |
|  | Accept the absentee ballot as a regular ballot               | 45%                 |
|  | Accept the absentee ballot as a provisional ballot           | 14%                 |
|  | Destroy the original ballot and vote a regular ballot        | 10%                 |
|  | Accept absentee ballot, but separate from regular ballots    | 14%                 |
|  | Call election administrator to determine status of ballot    | 5%                  |
|  | Other  | 5%                  |

Source: Compiled by the Legislative Audit Division from survey data collected from county election officials.

Survey responses show disparities in how county election officials are understanding and/or implementing elections laws in relation to absentee voters. For all three scenarios presented to the county officials, there are significant differences in how different counties have been instructing poll workers relative to absentee voters. Responses showed very little uniformity in how poll workers had been instructed to deal with different situations, suggesting there is considerable risk voters in different counties will receive different treatment at the polls and experience different outcomes in terms of the voting process.

Survey responses also showed differences between counties in terms of the types of information they provided in mailings to absentee voters. Significant numbers of counties did not include information on over-voting (38 percent) or ballot replacement (24 percent) in information included with absentee ballots. One of the concerns with the expansion of absentee voting is the reduced opportunities voters may have to access information regarding their voting rights. As defined under HAVA, state voting systems need to ensure voters have information on over-voting and their right to request replacement ballots in the event of a voting error. HAVA does not distinguish between the application of these standards to absentee voting and polling place voting, suggesting absentee voters need to

have access to the same information. The fact that a quarter of Montana's counties do not provide information on over-voting and ballot replacement for absentee voters is therefore problematic.

### **Vulnerabilities Exist with Absentee Voting in Montana**

The increased popularity of absentee voting over the last few election cycles highlights this issue as a new area of vulnerability for elections administrators. With nearly one-third of the electorate requesting absentee ballots for the 2006 elections, this voting process should be subject to a greater level of scrutiny. Furthermore, the fact that absentee voting takes place outside of the normal oversight mechanisms applied during polling place voting should be recognized as a risk factor for electoral fraud. The findings of the National Commission on Federal Election Reform, which formed a significant part of the final HAVA legislation, identify absentee voting as the "most likely opportunity" for election fraud.

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#### **CONCLUSION**

*Increased levels of absentee voting and inconsistencies in absentee ballot procedures constitute an area of vulnerability for the administration of elections in Montana.*

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### **Addressing Inconsistencies in Absentee Voting Procedures**

The decline in the return rate for absentee ballots noted in our data analysis could suggest the beginnings of problems with the correct issuance and processing of absentee ballots. Montana still compares well with national averages for absentee ballot counting, but left unchecked inconsistencies in absentee voting procedures could result in further declines in the count rate for absentee ballots. It should be possible to ensure a more uniform approach to processing absentee voters in polling places. Inconsistencies in processing of absentee votes result in unequal treatment of different voters and, potentially, reduced levels of participation and more uncounted ballots. Addressing these inconsistencies could ensure greater equity in how absentee voters are processed in different circumstances.

### **Secretary of State Should Lead Efforts to Standardize Absentee Voting**

The SOS office has an important role to play in establishing a more standardized and uniform approach to these issues and communicating with county election officials regarding absentee voting. Concerns with absentee voting may not have been adequately addressed because this was one area of elections administration that was left relatively untouched by HAVA. Public education and poll worker training efforts have focused on new developments in elections administration directly relating to HAVA. Meanwhile, absentee voting has become an increasingly popular option among voters, but has not received a corresponding amount of scrutiny. The SOS office could remedy this situation by revising ongoing public education and poll worker training to emphasize correct procedures for handling absentee ballots in polling places. In addition, the SOS office should continue working with county election officials to ensure absentee voting communications meet common standards and contain sufficient information.

An additional area for consideration is the lack of clear guidance available in statute regarding the treatment of absentee ballots not delivered to county election offices. There is currently a presumption in statute that absentee ballots will be delivered to the county election office, so little guidance exists for situations where an absentee ballot is delivered to another location (for example, a precinct polling place). The SOS office should consider the need for further statutory clarification in this area.

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**RECOMMENDATION #11**

*We recommend the Secretary of State's office work with counties to address inconsistencies in the administration of absentee voting by:*

- A. Revising public education and training efforts to provide increased emphasis on the absentee voting process; AND*
  - B. Reviewing county absentee voting communications to determine where required voter information could be standardized further; AND*
  - C. Where necessary, seeking statutory revisions to clarify treatment of absentee ballots received in different circumstances.*
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# CHAPTER VII – POLLING PLACE ACCESSIBILITY

## **Introduction**

For the 2004 elections, 120 million Americans cast ballots in over 115,000 different polling places around the country. A wide variety of buildings and locations serve as polling places. Montana currently has around 550 polling places, including schools, county and state government offices and buildings, churches, places of business, retirement homes, community halls, libraries, and even private residences. The importance of the physical accessibility of buildings and voting equipment is often underestimated in debates over participation in the electoral process. The Help America Vote Act (HAVA) addressed several issues relating to the physical condition of polling places. HAVA provisions relating to polling places primarily addressed making facilities and equipment more accessible for people with disabilities.

HAVA provisions relating to polling places were designed to mitigate barriers to voting imposed by the physical condition of buildings, and the quality of facilities and equipment provided for voters. HAVA provided funding to states for upgrading buildings used as polling places to allow for better access for people with disabilities. The Act also requires every state to ensure each polling place is equipped with a voting system accessible to people with disabilities.

## **Audit Work Relating to Accessibility**

Audit work addressed two issues relating to accessibility. Findings and recommendations for the following areas are included in subsequent sections of this chapter:

- ♦ HAVA-funded upgrades made to polling places to improve accessibility for people with disabilities.
- ♦ Deployment and operation of Automark assisted voting technologies for people with disabilities.

## **Polling Place Accessibility**

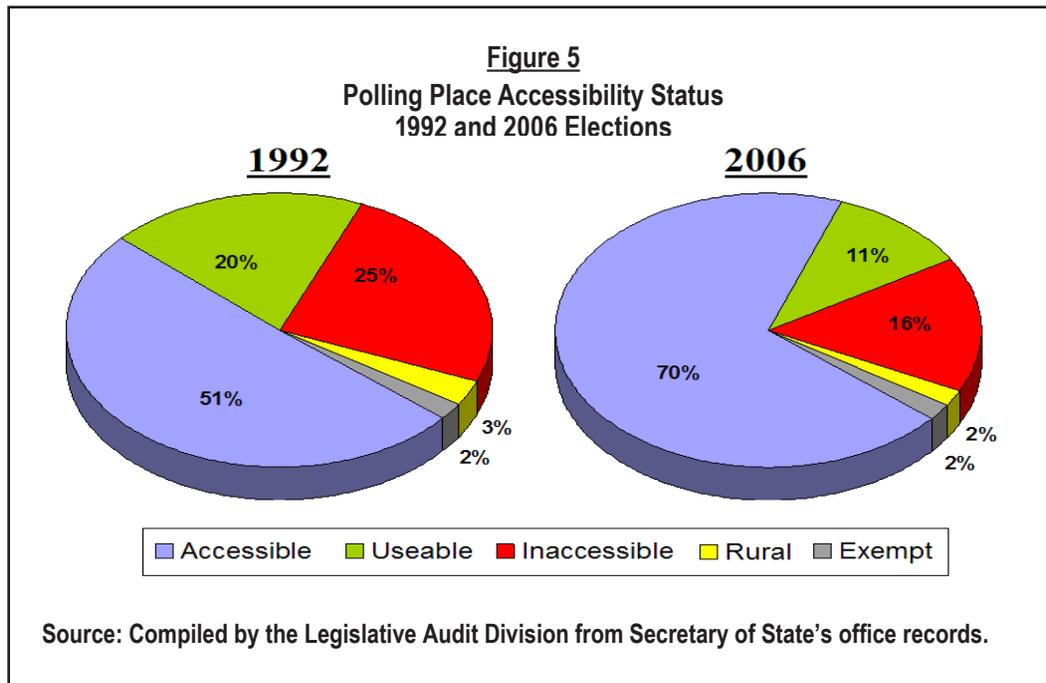
Although HAVA provided additional funding for states to ensure polling places are accessible for people with disabilities, the Act did not radically alter federal requirements in this area. HAVA encourages states to work towards making polling places more accessible, but stops short of imposing additional requirements. States still retain significant control over the establishment of accessibility standards for polling places. Montana has legislated to establish legal standards for polling place accessibility, including the requirement that all new polling places (those established after 2005) meet the Americans with Disabilities Act (ADA) accessibility requirements. All existing polling places are required to meet less stringent standards for accessibility. Importantly, Montana law also provides a means of permanently or semi-permanently exempting some polling places from accessibility standards.

## Trends in Accessibility Status

State election officials have been required to collect data on polling place accessibility since the mid-1980s as required under the federal Voting Accessibility Act. This information is compiled by counties following a self-assessment procedure conducted at polling places prior to each election. Montana statute establishes various designations for the degree of accessibility for polling places. The primary categories are:

- ◆ Accessible (polling places meets accessibility standards).
- ◆ Inaccessible (polling place does not meet accessibility standards).
- ◆ Rural (polling place serves less than 200 registered electors and has been exempted from accessibility standards).

Additionally, statute establishes an ‘Exempt’ designation for polling places that are inaccessible, but for which no easy replacement location can be found within the precinct. The following chart illustrates the trend in accessibility status for Montana polling places between the 1992 and 2006 elections.



Between 1992 and 2006 there has been an improvement in polling place accessibility for people with disabilities. According to SOS office data, accessible polling places now constitute 70 percent of the total, compared with around half in 1992. The number of polling places classified as either inaccessible or as inaccessible but useable has declined to 16 and 11 percent respectively. The proportion of polling places classified as either rural or exempt has remained essentially unchanged, suggesting there are a limited number of polling facilities that will likely continue to function without meeting accessibility requirements.

## November 2006 General Elections Observations

Observations conducted by audit staff during the November 2006 General Election included review of various accessibility factors for polling places visited. Overall, our polling observations showed around 40 percent of the facilities we visited during the November 2006 elections provided unimpeded access to voting for an individual with a severe physical disability (such as use of a wheelchair). For around 20 percent of the polling places visited, we observed significant access issues that would normally be considered problematic for an individual with moderate to severe physical disability or visual impairment. For this 20 percent of polling places, it is reasonable to assume that the access to the polling place constitute a barrier to voting for individuals with disabilities. Our observations show a slightly higher rate of inaccessible polling places as compared with information collected by the Secretary of State's office. However, it is likely that at least some of this difference is attributable to interpretation of the 'technically inaccessible, but useable' designation previously used in assessment of polling place accessibility by election officials.

## HAVA Accessibility Grant Program

Montana's HAVA funding included \$2 million to provide for improvements in polling place accessibility. SOS entered into a contract with a non-profit advocacy organization to administer a grant program for use by counties making improvements to their facilities. The grant process involves submission of applications from counties. Proposed projects and costs are assessed before approving the grant or requesting further information. Grants are limited to \$5,000 per polling place and are distributed on a first-come, first-served basis. Counties must provide a 25 percent financial or in-kind match to receive funding.

The accessibility grant program has committed around \$809,000 of the original \$2 million to projects which are either underway or pending approval. Further analysis of data from the accessibility grant program did identify some concerns with the method used to distribute and account for the funding. Grant applications were made on a voluntary basis and there was no requirement for counties to participate. As a result, some counties have not participated yet and some counties have not applied for as much grant funding as they may need. Three specific issues were identified from the application information submitted to date:

- ◆ 5 of the 10 non-participating counties have existing polling places classified as either inaccessible or technically inaccessible, but useable. These polling places would benefit from improvements to accessibility features, but the county has not made any application for available funding.
- ◆ 16 of the 46 participating counties have applied for grants for fewer polling places than may be necessary. Records show these 16 counties have a combined total of 54 polling places classified as inaccessible, but have only made applications for improvements to a combined total of 18 facilities.
- ◆ It was unclear what methods were being used to verify completion of work or assess the quality of accessibility improvements made by counties. Submission of a completion notice by counties has required, but agreements between the

SOS office and the contractor did not specify a methodology for inspecting or verifying completion of funded activities. The SOS office has recently made changes addressing this concern.

The accessibility grant program has not been administered on the basis of need and has relied on the voluntary participation of counties. County election officials need to be able to provide match funding for accessibility projects and may also face difficulties upgrading facilities where the building owners do not want work to be performed. However, it is not clear from the information provided on the accepted and pending grants whether any determination has been made regarding unmet needs in specific counties.

### **Survey Responses Relating to Accessibility Grants**

Survey responses showed the majority of county election officials were satisfied with the information and guidance they received regarding the accessibility grants program. These results also show there is probably a considerable amount of further work that will be required to ensure polling places are fully accessible for people with disabilities. Forty-three percent of county election officials said funding available for making improvements has not been sufficient to complete all the necessary work on polling places. A similar proportion of county election officials also said they will require further advice and assistance in making polling places accessible.

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#### **CONCLUSION**

*Montana has made good progress in accessibility of polling places. Continuing distribution of HAVA grant funds could be prioritized to address unmet needs in counties.*

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### **Ongoing Management of Accessibility Issues Required at the State Level**

The decentralized and cooperative approach taken by the SOS office to the distribution of HAVA accessibility funding has been beneficial to the ultimate goal of improving access for people with disabilities. Using a non-profit advocacy organization as grant administrator provides valuable expertise on accessibility issues, which may otherwise not have been available to the SOS office. The grant-based approach also ensured counties would be involved in the decision-making process and additional resources would be available through local match funding.

We believe the SOS office could improve on the efforts made to date by focusing more on an active management role in accessibility issues in the future. In the short-to medium-term, the office could work with the contractor and county election officials to ensure remaining grant funding is distributed based on unmet needs in certain counties. It will also be necessary to conduct some level of follow-up review to ensure grant-funded work completed to date meets quality standards. In the longer-term, the office will need to continue prioritizing the need to remove remaining barriers to accessibility. As discussed above, only a small minority of polling places are likely to be permanently categorized as inaccessible. For the remaining polling places currently classified as inaccessible, the SOS

office should work with counties to establish reasonable expectations regarding eventual improvements or, where necessary, alternative locations. The SOS office has indicated they have already begun work on these changes.

**RECOMMENDATION #12**

*We recommend the Secretary of State's office continue addressing polling place accessibility issues by:*

- A. Working to identify unmet needs and prioritize allocation of remaining funding based on these needs; AND*
- B. Establishing long-term goals for reducing the number of remaining inaccessible polling places through upgrade or replacement.*

## **Automark Assisted Voting Machines**

HAVA requires each state's voting system be accessible for people with disabilities and for the blind and visually impaired. The Act also specifically requires that states meet this requirement by using at least one voting system in each polling place that allows the required level of accessibility. In Montana's case this was achieved through the purchase of the Automark voting system. Montana elections laws were revised in 2005 to include specific references to assisted voting technologies such as Automark.

### **Purchase and Deployment of Automarks**

HAVA does not allow states to meet voting system accessibility compliance standards through any means other than the actual provision of equipment in every polling place. There is no waiver process and no polling places are exempted from the requirement, regardless of size or other factors. The SOS office was responsible for the purchase and initial deployment of Automarks. Automarks were provided for every polling place at no initial cost to counties. The SOS office worked with the disabilities community as well as other organizations in the process of selecting the Automark system. Due to the specifications of the system and availability of vendors, the SOS office entered into a sole source purchase agreement to provide the system. The terms of the contract are summarized as follows:

- ◆ 725 Automarks were purchased at a unit cost of \$5,000 for a total equipment cost of \$3.625 million.
- ◆ Software and other applications used to operate the Automarks were included in the contract at a price of \$28,000.
- ◆ The contract provided for systems support and service including project management, training and Election Day technical services at a cost of \$288,200.
- ◆ Installation, shipping and handling charges of \$101,500.

The total expenditures involved for purchase, installation, testing, training and maintenance of the Automark system through the 2006 general election were \$4,042,700.

These costs were met directly through the HAVA grant and were not allocated to counties. Funding system operations and maintenance in future election cycles will be a county responsibility.

## Functionality and Security Testing

To perform some basic functionality and security testing, we obtained an Automark system being used as a demonstration model by the SOS office. The system was tested for basic functionality and to determine whether it was secure from inappropriate access and tampering.

**Automark Functionality** – to use the Automark, the voter enters a regular paper ballot into a slot on the front of the device. The Automark scans (reads) the ballot to determine if it is the correct ballot for the precinct. Different races and ballot initiatives appear on a screen in consecutive order. The voter can vote for each measure by touching the screen or using a key pad. Once one measure has been voted on, the voter clicks a next arrow and a new measure will appear. The voter has the option to return to previous measures at any point. Once the voter has completed the process, the Automark displays all their choices and asks them to review their votes. If everything is correct, the voter will notify the Automark, and the votes will be printed on the ballot and returned to the voter. It is then the responsibility of the voter to submit the ballot to the ballot box.

**Security Testing** – audit staff performed various tests on the demonstration model to determine whether the system was vulnerable to tampering or other misuse that could affect how votes were cast or counted. Overall, we found the Automark presents a relatively low risk for misuse or fraud. Primarily, this is because the Automark system does not use internal memory to store or transmit votes. The system merely allows a voter to use an electronic interface to mark a paper ballot, which is then deposited for counting in the normal manner. The only way ballot information could be manipulated would be to change data stored on the device's flash memory card. Testing shows the system is equipped to prevent unauthorized access of the stored ballot choices. The primary system weaknesses of Automark appear to be related to the ability to disable the device or physically access the flash memory device (see section below on securing the Automark during polling).

## Automark Observations for 2006 General Election

Election Day observations by audit staff included assessment of Automark deployment and usage. Information and data gathered on Election Day included observations of voters requesting to use Automark machines, and questions for chief election judges regarding use of the systems and any technical problems. We used this information to estimate the number of voters using the new systems and to compile information on the deployment and operation of the systems by counties. Election Day observations for Automark systems are summarized in the following table.

**Table 14**  
**Election Day Automark Use and Operation**  
**November 2006 General Election**

| <b>Election Day Automark Observations</b>            |              |
|--|--------------|
| Voters Requesting Automark Use                       | <b>2,343</b> |
| Polling Places Reporting Automark Use                | <b>40%</b>   |
| Polling Places With No Functioning Automark          | <b>8%</b>    |
| Polling Places Reporting Automark Technical Problems | <b>36%</b>   |
| System Operation Keys Left in Machine                | <b>34%</b>   |

**Source: Compiled by the Legislative Audit Division from Election Day poll observation data.**

Observational data from the 2006, General Election highlights three issues relating to the deployment and operation of the Automark systems:

**Use of Automarks**—usage levels for the Automark system were relatively low. Our estimates show that the system was used by around 2,300 voters throughout the state and that use was only reported in 40 percent of polling places. Automark is a new technology and usage rates probably suffered due to a lack of awareness or familiarity with the system.

**Operational and technical problems** – our observations indicated widespread technical problems with the Automark systems. We estimate that around 45 polling places (8 percent) did not have a functioning Automark available, either because poll workers did not setup the device or because it malfunctioned and was shutdown. Additionally, 36 percent of the polling places we visited reported technical problems with the operation of the systems. The most common technical problems reported during our observations related to the system’s ballot printing mechanisms.

**System operation keys** – around one third of the systems we observed on Election Day were being used with the system operation keys still in the machine and accessible to voters. Automarks have an operational key to turn the system on/off, and also have a separate barrel-type key to access the system memory card. Leaving either of these keys in the machine allows anybody within the polling place to disable the device, either by shutting it down or removing or tampering with the ballot information stored on the memory card.

### **Survey Responses Relating to Automarks**

Our survey of county election officials contained a section devoted to the deployment and operation of the Automark systems. Various questions were asked in order to determine whether county election officials were satisfied with the processes used to deploy the systems, what kind of training they provided for poll workers, and their operational experiences with the Automarks. The following table summarizes survey responses for selected questions.

**Table 15**  
**Survey Responses Relating to Automark Systems**

| Question   | Response Options                      | Response Percentage |
|--|---------------------------------------|---------------------|
| <i>Did the Secretary of State's office provide you and your staff with sufficient training and technical guidance relating to the operation of the Automark?</i> | Yes                                   | <b>81%</b>          |
|  | No                                    | <b>19%</b>          |
| <i>Did any of your polling places experience any of the following technical problems with the Automarks?</i>   | Failure to start                      | <b>18%</b>          |
|  | Unable to read test ballot            | <b>21%</b>          |
|  | Incomplete or inaccurate ballot data  | <b>8%</b>           |
|  | Ballot scanning problems              | <b>42%</b>          |
|  | Ballot printing problems              | <b>76%</b>          |
|  | Paper ballot jamming                  | <b>71%</b>          |
|  | Incorrect marking of ballot           | <b>26%</b>          |
|  | Unexplained shutdown or power failure | <b>18%</b>          |
| Other  | <b>16%</b>                            |                     |

**Source:** Compiled by the Legislative Audit Division from survey data collected from county election officials.

The highlighted survey results show county election officials were satisfied with the level of training and guidance they received from the SOS office in relation to the Automarks. Over 80 percent thought the SOS office provided sufficient training and technical guidance. However, large numbers of counties also reported technical difficulties with the Automark devices on Election Day. Survey responses relating to technical problems show the most common faults reported with Automarks were related to the paper ballot printing/marking system functions. Problems with ballots scanning incorrectly, printing incorrectly or jamming in the print mechanism were the most common faults. Observational data from polling places also indicated many printing problems were caused by poll workers neglecting to remove the perforated tabs from ballots. Fortunately, there appeared to be relatively low incidence of system malfunctions of a more serious nature, such as incorrect ballot data displays or incorrect ballot marking.

### **Improvements Needed in Operation of Automark Systems**

The introduction of new voting technology is always going to be a matter of concern and a cause of some errors at the polls. A lack of familiarity with a new technology on the part of poll workers and the voting public can lead to problems with the successful operation of new systems. The deployment of the Automark system for the 2006 election cycle is illustrative of this general point. In some senses, it was inevitable this new system would run into problems in its first real test at the polls.

## **Automark Technology is Innovative, but has Weaknesses**

Problems with the operation of Automarks should not overshadow the fact that this is an innovative technology that has allowed voters with disabilities and visually impaired voters to exercise their democratic rights in an independent manner. Prior to the introduction of assisted voting technologies, people with disabilities faced significant barriers to voting in an independent manner that assured their right to privacy.

The Automark system does, however, have certain inherent weaknesses and counties will likely face continuing difficulties with its operation. Because Montana law requires a paper ballot be used in all elections, the Automark system must be equipped with the functionality and features to allow for a paper ballot to be scanned and printed. By necessity this involves mechanical parts that would otherwise be missing from a direct recording electronic device, which stores and transmits voter preference through internal memory. The need to manually feed, scan and print a paper ballot means the Automark has moving mechanical parts that will jam, stick or otherwise fail at inconvenient times.

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### **CONCLUSION**

*Widespread operational problems with the Automark system should be addressed to ensure successful future use of this innovative technology.*

## **Familiarity Should Remedy Some Problems**

Inherent weaknesses with the Automark system were probably exacerbated during the 2006 elections by a lack of familiarity with the equipment among poll workers. Documents provided by SOS and survey responses from county election officials indicate there was sufficient and relevant training provided for poll workers regarding the Automark. This training and guidance was available in several different forms. One area of weakness with the information supplied to front-line poll workers could be the fact that the instructions provided with each Automark were on CD and were probably not available within polling places where they could have been useful in remedying some simple operational errors.

More exposure to use of the Automark, familiarity with system operations and increased trust in newer voting technologies should help to remedy some of the problems seen in this election cycle. It should also be expected that as the system becomes a more accepted and recognized feature in polling places, there could be some increase in the levels of use seen during the 2006 elections.

## **SOS Should Provide Specific Written Instructions on Automark Use**

Although responsibility for Automark system operations and maintenance now rests solely with county election officials, there is still a role for the SOS office providing guidance on system operations. Specifically, the current version of the Election Judges Handbook could be updated to include a brief Automark installation and troubleshooting guide. Provision of Automark is a requirement of HAVA and, therefore, is a legal responsibility county election officials must bear in future elections. Continuing widespread problems with the operation of the system must be remedied if counties are to avoid exposure to legal challenges by or on the behalf of voters with disabilities.

**RECOMMENDATION #13**

*We recommend the Secretary of State's office update the Election Judges Handbook to include specific written instructions on installation and operation of Automark voting systems during polling.*

# CHAPTER VIII – FUNDING ELECTION REFORM

## **Introduction**

The last few election cycles in Montana have seen some of the most significant changes in voting procedures in a generation. In addition to the Help America Vote Act (HAVA), election officials have been required to implement further changes in elections laws, such as late registration and expanded absentee voting. HAVA has fundamentally altered the state's electoral process and its effects will be noticeable for many years. The original federal legislation imposed deadlines on states, which basically envisioned a two to three year implementation period for the changes outlined in HAVA. Our review of the impacts in Montana resulting from HAVA suggests this timeframe was generally unrealistic. In reality, state and county election officials will be dealing with the effects of HAVA for many years.

## **Funding and the Future of Elections in Montana**

In addition to imposing new costs for elections administration, HAVA has also re-balanced authority and responsibilities between state and county election officials. The Act has created new responsibilities for states, some of which must be met by the chief elections officer, rather than local election officials. The extent to which changes in funding needs and operational responsibilities have been recognized in Montana is the subject of this final chapter.

The following sections outline information relating to future funding requirements for HAVA in Montana and include discussion of the following:

- ◆ Secretary of State's (SOS) office budgets and expenditures for HAVA-related activities.
- ◆ Input from county election officials regarding HAVA funding requirements.
- ◆ Continuing viability of Montana's elections funding structures.

## **HAVA Budgets and Expenditures**

To date, the SOS office has expended approximately 80 percent of the original HAVA federal grant. As anticipated in the original state HAVA plan, the largest expenditures have been made in two areas; polling place and voting system accessibility (including the purchase of the Automark systems), and the statewide voter registration system (SVRS). The following table shows budgeted expenditures, expenditures to date, and remaining budget amounts for the main HAVA activity categories included in the state plan.

**Table 16**  
**HAVA Expenditures versus Budgets**  
**Through May, 2007**

| HAVA Budget Category                | Budgeted Expenditures | Expenditures to Date * | Remaining Budget   |
|-------------------------------------|-----------------------|------------------------|--------------------|
| Polling Place/Voting Accessibility  | \$5,660,000           | \$5,126,133            | \$533,867          |
| Statewide Voter Registration System | 5,303,593             | 5,339,183              | 0                  |
| Voting Systems                      | 1,840,887             | 977,323                | 863,564            |
| Education & Training                | 2,113,223             | 1,551,983              | 561,240            |
| Administration                      | 332,296               | 328,295                | 4,001              |
| Future Contingency **               | 2,111,483             | --                     | 2,111,483          |
| <b>Total</b>                        | <b>\$17,361,482</b>   | <b>\$13,322,917</b>    | <b>\$4,038,565</b> |

\* Expenditures reported by the Secretary of State's office by HAVA budget category do not equal total expenditures reported in SABHRS as included in Chapter I of this report.

\*\*Future contingency includes ongoing SVRS maintenance costs.

**Source: Compiled by the Legislative Audit Division from SABHRS and Secretary of State's office records.**

As shown, unexpended funds remain in most of the main budget categories, with the exception of SVRS development. Specific issues relating to each budget category are discussed as follows:

**Accessibility** – total expenditures associated with purchase and deployment of the Automark systems should total around \$4 million, once the vendor contract is closed. Remaining budgets and expenses are associated with accessibility grants and related outreach efforts. The SOS office has stated responsibility for future Automark maintenance and operations will be a county responsibility. Any remaining funding currently assigned to accessibility improvements could be used to provide further physical improvements to polling places, to conduct more outreach among the disabilities community, or could be reassigned as necessary to other activities.

**SVRS** – systems development work appears to be largely complete and the SOS office has already decided to handle support tasks internally, rather than relying on a vendor contract. SVRS development has been completed mostly in line with budgetary expectations, but the SOS office will need to meet continuing resource demands in this area associated with ongoing system maintenance and training.

**Voting Systems** – expenditures to date include approximately \$885,000 for county precinct counter purchases. Potentially, this leaves over \$850,000 in funding available for further improvements in county voting systems.

**Education & Training** – the SOS office has conducted extensive public education and poll worker training efforts using HAVA funding. Expenditures to date leave around \$560,000 in available funding, much of which will probably be depleted through the next election cycle. SOS office education and training efforts have generally been well-received and their importance has been highlighted in several sections of this report. It is unclear what further efforts the SOS office may have to undertake in this area.

**Administration** – the SOS office has expended most of the funds available for administrative purposes, i.e. purely administrative tasks carried out by SOS office staff, which are unrelated to any specific aspect budgeted in other areas.

**Future Contingency** – the original state plan budgeted around \$1.3 million for future needs and unanticipated costs associated with HAVA implementation. Additionally, the HAVA federal special revenue fund has earned around \$750,000 in interest since fiscal year 2003. During the 2007 legislative session, interest earnings on the HAVA account were appropriated to the SOS office for use in helping counties complete implementation of the act.

## **Survey Results Relating to HAVA Funding**

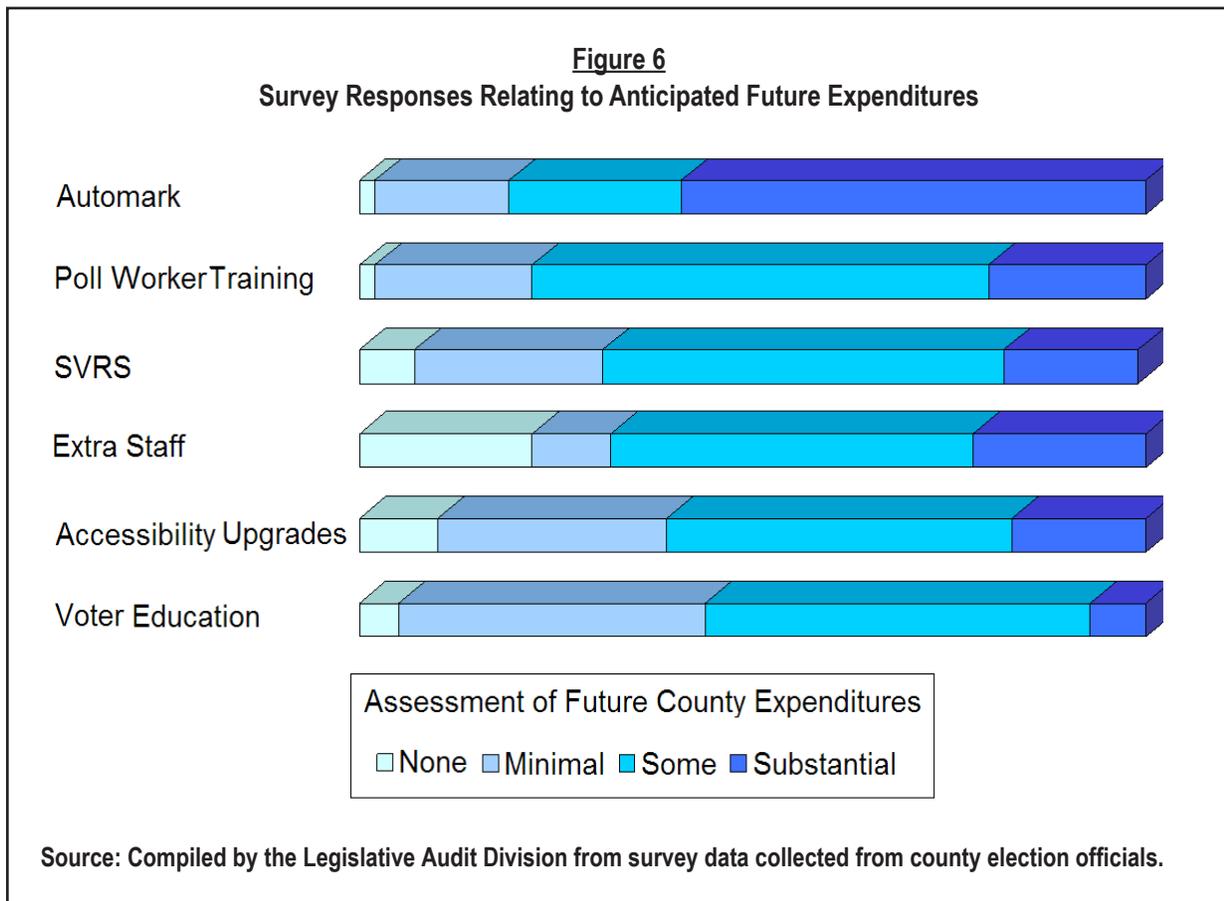
We asked county election officials a series of questions relating to HAVA funding requirements. In relation to the funding available for implementing the Act, the majority of respondents thought Montana's HAVA funding allocation was insufficient (56 percent). Given the widespread criticism of HAVA as an under-funded mandate, it is unsurprising county election officials did not think sufficient funding was allocated. The majority of respondents also thought the funding was distributed between counties on an equitable basis (64 percent).

One of the survey questions asked whether county election officials thought HAVA funding for specific activities was set at the right level. Results showed that for most of the main budgeted HAVA activities, counties were satisfied the funding amounts were appropriate. There was only one area where responses showed less consistency and this related to funding for election official and poll worker training. Around 45 percent of respondents said too little funding was dedicated towards training for election officials and poll workers.

## **County Election Officials Assessment of Future Needs**

We also asked county election officials whether they anticipated future expenditures in certain areas relating to HAVA (these included polling place accessibility, Automark maintenance, voter education/outreach, poll worker training, SVRS support, and hiring additional elections staff). Respondents were asked to indicate what level of anticipated costs they faced. Only one county responding to our survey indicated they expected no

additional costs in any of the areas in question. All the rest of our respondents said they expected some level of future costs associated with HAVA. Results for specific areas are shown in the following figure.



Maintenance of the Automark voting system is clearly regarded by county election officials as being the most likely HAVA activity to result in further expenditures in the future. Counties will need to pay for regular maintenance of the Automark devices, purchase supplies and spare parts, and absorb additional costs associated with deploying and operating the machines for each federal election. Other areas anticipated to involve significant future expenditures for counties are poll worker training and SVRS support. HAVA has increased the complexity of elections and poll workers are required to be conversant in an increasingly large number of fairly complex procedures. County officials obviously foresee increased time and effort being necessary if poll worker training is to keep up with the demands of modern elections. In terms of SVRS operations, counties have probably benefited to some degree from being able to use a centralized system without paying for their own dedicated proprietary software applications. However, SVRS operations do require the active involvement of counties and there are likely to be ongoing costs for meeting security requirements and training staff in SVRS functionality.

## **Viability of Montana's Elections Funding Structure**

While it may be difficult to determine exactly how much added costs have resulted from HAVA, it is reasonable to assume that the Act has had the effect of making elections more complex and more expensive. Under Montana's current method for funding elections, ongoing costs associated with HAVA will be largely the responsibility of counties. The remaining HAVA funding allocated to Montana could provide some ongoing support for counties, but this is unlikely to last much beyond the next two election cycles. At the state level, the SOS office will have to continue funding operation and maintenance of the SVRS and find additional resources to meet the expanded oversight and reporting roles implicitly assigned under HAVA. Again, funding available through the original HAVA grant will be short-lived.

## **Funding Sources and Assignment of Responsibility for Elections Reforms are Unclear**

Currently, it is not clear whether there has been sufficient analysis of or preparation for meeting HAVA and other elections reform efforts over the long term. County election officials have identified different areas where they expect to incur additional costs in implementation of HAVA provisions. In addition, the introduction of other elections reforms has resulted in additional costs, which must be met through county elections budgets. The SOS office has also assumed new responsibilities under HAVA, including the operation and maintenance of the statewide voter registration system.

## **Best Practices Emphasize Long-Term Perspectives and Shared Responsibility**

Prior to the introduction of HAVA, the National Commission on Federal Election Reform highlighted the probability that elections reforms would likely result in a 30 to 40 percent increase in spending on elections administration nationwide. The commission also highlighted several principles in relation to allocation of costs for elections reforms. These principles included the necessity of calculating funding requirements on a long-term basis and of state governments assuming more responsibility for elections administration relative to counties.

The Government Accountability Office also released a report prior to the introduction of HAVA addressing preparation for broad-based elections reform. This report was addressed to Congress and provided an analytical framework for assessing the merits of competing proposals for elections reform. One of the main elements of criteria identified by GAO was the affordability and sustainability of proposed election reforms. Specifically, the criteria relating to costs emphasized the need for an accurate assessment of initial outlays, evaluation of the long-term cost impacts, and assignment of responsibility between different levels of government (federal, state, and local).

## **Montana's Experiences are not Consistent with Best Practices**

The long-term approach to funding of elections reform in Montana is not consistent with best management practices established at the national level. As a result, it is not clear

whether the impacts of HAVA and other elections reforms can be effectively mitigated over the long-term. At the state level, the SOS office has been assigned a more expansive role in elections administration, but no long-term funding source has been identified to ensure sufficient resources are devoted to critical activities, such as maintenance of the SVRS, oversight and reporting of enforcement of voting rights, or handling complaints. Within the SOS office, elections activities are funded through the main business services account, a small proportion of which is actually sourced from activities related to elections (candidate filing fees and sales of voter registration lists). The office requested increases in fees during the 2006 Legislative session, but this request was not successful. The office's responsibilities relative to elections are increasing, but there has been no corresponding change in the fee structure for the office's main proprietary fund and no alternative dedicated funding source has been identified.

For county governments, election reform efforts have imposed significant additional administrative costs. For example, continuing maintenance and support for the Automark voting system could result in counties incurring collective costs of up to \$165,000 annually over the life-cycle of the technology. Although some of these costs should have been offset by savings in areas of responsibility assumed by the state (SVRS), there are other areas where assessment of the division of responsibilities and resource needs has been insufficient or non-existent. An example of this would be the late registration, which was introduced with no apparent consideration of the likely financial impacts on county election administrators. Where significant changes in elections procedures are made without proper consideration of both initial outlays and long-term cost implications, there can be no assurance the intent of legislation will be effectively implemented.

### **Secretary of State's Office Should Begin Exploring Funding Options**

The original Montana HAVA state plan was released in 2003 and outlined the state's proposed methods of implementing the act and allocating funding for various activities. The plan was amended in 2005 to include budget revisions, but the majority of HAVA-related changes had not been completed at this point. We believe the completion of the first full election cycle with all HAVA-requirements in place provides a good opportunity for the SOS office to revisit budgetary priorities and address the broader issue of funding elections reform. The SOS office has taken some steps to address the funding needs of counties through appropriation of HAVA interest earnings for this purpose, but at this point there does not appear to be a clear plan for distribution of this funding in different areas.

Montana statute assigns responsibility for funding elections administration almost solely to county governments. Statutory designation of responsibility for elections administration and costs reflects previous practices, where a very limited role was reserved for the Secretary of State's office. Introduction of HAVA has rebalanced election administration responsibilities assigned to state and county governments, but the need for corresponding changes in statutory responsibility have not been addressed.

Electoral processes are constantly adapting as society and technology change. As the state's chief election officer, the Secretary of State has a responsibility to ensure this

process of change is well-managed. The SOS office should, therefore, begin addressing the need for a thorough review of funding requirements for elections activities following the depletion of HAVA funds. This review should also encompass an assessment of the fiscal responsibilities being placed on counties by future changes in election laws, and the long-term viability of current funding sources for elections administration.

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**RECOMMENDATION #14**

*We recommend the Secretary of State's office take steps to address the future funding of elections by:*

- A. *Updating the state HAVA plan to include any necessary changes in the allocation and distribution of remaining HAVA funding; AND*
  - B. *Identifying whether counties can meet the ongoing implementation costs of elections reform efforts following depletion of HAVA grant funding; AND*
  - C. *Where necessary, seeking legislative changes to accurately reflect division of responsibility for elections funding and provide a viable basis for long term implementation of HAVA and other elections reforms.*
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## APPENDIX A – AUDIT APPROACH

### **Audit Scope**

Audit scope was developed to address provisions of the Help America Vote Act (HAVA) being implemented by state and local governments. Responsibility for implementation of some HAVA provisions rest with federal agencies and were not included within the scope of our audit. Audit scope was also expanded to address recent changes in Montana elections laws, which are being implemented independently of HAVA provisions. This scope expansion included changes in registration procedures extending the period during which voters are able to register to vote prior to Election Day (known as late registration), and changes in absentee voting procedures made over the past three election cycles.

Developing audit scope to specifically address HAVA provisions and selected additional changes in elections law effectively excluded many activities conducted by state and county election officials before, during and after elections. Audit scope excluded county activities relating to the identification, organization and staffing of polling places; compilation, printing, distribution and collection of ballots and other elections supplies and equipment; and vote counting and tabulation of election results. At the state level, activities within the Secretary of State's (SOS) office excluded from scope related to procedures for qualifying candidates and ballot initiatives; and the office's role in conducting a statewide canvas and certifying election results.

### **Audit Methodologies**

Audit methodologies were developed to address the objectives noted in Chapter I of this report. The following sections summarize audit methodologies conducted in various areas.

#### **Statutory References**

Federal and state statutes, regulations and rules relevant to implementation of HAVA were reviewed to identify applicable guidance and compliance standards for administration of elections in Montana. Federal statutes included those codified under the Help America Vote Act of 2002, the Voting Rights Act of 1965 (with subsequent amendments), and the Voting Accessibility for the Elderly and Handicapped Act of 1984. Montana elections laws were also reviewed along with bills introduced during the past three legislative sessions relating to implementation of HAVA and other recent election reform efforts. Montana administrative rules relating to elections administration were also obtained and reviewed.

#### **Agency Interviews and Observations**

We conducted interviews with members of staff within the SOS office responsible for elections administration. We also interviewed staff members responsible for maintenance of the statewide voter registration system (SVRS) and other information technology applications necessary for support of elections activities. Interviews with agency personnel were conducted both before and after the November 2006 general elections. Audit staff also conducted observations of activities within the SOS office. These observations

included SOS office training and informational events relevant to elections administration. Audit staff were also present within the SOS office during the November 2006 elections to observe the activities of staff and interaction between state and county election officials and the general public.

### **Review of Agency Documents and Records**

Documents and records within the SOS office relating to the planning and implementation of HAVA in Montana were reviewed. Reviewed documents included those relating to the development of the Montana HAVA State Plan, subsequent amendments to the plan, and ongoing communications with county election officials and others regarding implementation of specific HAVA provisions. We also reviewed financial and budget information for the federal HAVA grant, including SABHRS revenue and expenditure reports and internal budgetary records maintained by the SOS office. A wide variety of other documents and records relating to other aspects of elections administration were also reviewed, these included contracts and agreements with contractors and vendors, complaints information, SVRS technical documentation, training guides, and other information distributed by the SOS office to county elections officials and the general public.

### **Statewide Voter Registration System**

Testing and analysis of the statewide voter registration system (SVRS) involved review of SOS office and county operation and maintenance of the system. We tested access and security procedures in place at state and county levels to ensure appropriate levels of access were assigned and the system secured from unauthorized access. Audit staff visited three different counties to test security settings for desktop computers and networks used to access SVRS. We reviewed incident reports and other documents relating to outages experienced by SVRS staff in the period prior to the November 2006 elections. We also interviewed staff within the SOS office and within the Information Technology Services Division of the Department of Administration with responsibility for system operations and with knowledge of circumstances relating to these outages. Testing the integrity of the data within SVRS involved accessing the system database using a computer-assisted auditing tool to extract and analyze records for registered voters. SVRS data was queried to determine whether state and federal statutory compliance standards were being met relative to the eligibility of registered voter records. Specific compliance standards included voter age, deceased status of voters, felony conviction status of voters, and duplication of voter records.

### **Automark Voting System Testing**

We conducted limited testing of the new Automark voting system to assess functionality and security performance. We also obtained and reviewed documents relating to the Automark system, including the purchase order and contract between the SOS office and the system vendor, technical manuals and user guides, and general background information relating to security testing procedures for assisted voting technologies. Audit staff obtained a demonstration model Automark from the SOS office and performed testing to assess functionality and system security. Security testing involved evaluation of the system's physical security properties and accessing the flash memory device used to store ballot and other operational data for the system.

### **Election Day Observations**

Audit staff conducted observations of polling place procedures during the November 2006 General Elections. Observations were conducted in 30 counties and 86 different polling places. Audit observations involved documentation of the physical condition of polling places, availability of certain voting equipment, and processing procedures for members of the public wishing to cast a ballot (including identification and registration verification, and ballot issuance). Observations were conducted throughout the course of regular voting hours and we observed a total of 1,323 individual voters. Observation data documented for these voters was used as a statistical sample of statewide voting behavior and was used to project attribute values for the statewide population of voters visiting polling places on Election Day. Observations in polling places also included brief interviews with chief election judges regarding changes in elections procedures resulting from HAVA. Audit staff were also present within the SOS office on Election Day to observe procedures.

### **County Election Officials Survey, Interviews and Observations**

We solicited input from county election officials at various stages throughout audit work. The primary means of obtaining county input was through an online survey distributed to all county election officials. This survey contained questions addressing implementation of HAVA provisions and other changes in elections procedures. 46 county election officials participated in the survey for a response rate of 86 percent. Survey responses included demographic data, which allowed for stratified analysis of responses based on county size and other characteristics. We also conducted interviews with individual county election officials relating to both general and specific issues addressed under our audit objectives. Audit staff also attended two meetings of the Montana Association of Clerk and Recorders to discuss progress with audit work and solicit input on various elections issues.

### **Review of Elections Returns and other Data**

Several audit objectives included methodologies involving obtaining and analyzing election results/returns and other voting data for the November 2006 General Election and previous election cycles. Election results and other voting data were generally obtained directly from the SOS office official canvas of election returns or from the federal Election Assistance Commission. The types of data used in these analyses included voter registration status, voter turnout, the numbers of votes cast and counted in specific electoral races, and the proportions of voters using different voting methods (absentee and provisional voting). Voting data was used in our analysis of voting systems to calculate residual vote levels in counties. Residual votes were calculated based on comparisons between voter turnout and the actual number of votes cast for candidates for federal and statewide office in every election between 1992 and 2006. We also used voting data in our analysis of trends in absentee and provisional voting, and in analysis of the effects of the introduction of late registration for the 2006 elections.

### **Information from Federal Agencies, Other States, and Other Sources**

As part of both audit planning and fieldwork stages, we reviewed various reports, studies and informational sources from federal agencies, other states, and other organizations or groups involved in election reform issues. These information sources were used to help

develop audit scope and objectives, to identify specific methodologies used during the course of audit work, and to provide background information or data relevant to different elections issues. These sources included the federal Elections Assistance Commission, the National Commission on Federal Election Reform, the Government Accountability Office, the National Conference of State Legislatures, the National Association of Secretaries of State, and the National Association of County Recorders, Election Officials and Clerks. We also reviewed information and reports from a range of different elections and voting rights issue groups and other interested parties, election equipment and voting systems vendors, academic studies of elections and voter behavior, and newspaper and other local media reports on election reform efforts and the effects of these changes on voting in Montana.

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AUG 10 2007

LEGISLATIVE AUDIT DIV.

## OFFICE OF THE SECRETARY OF STATE

STATE OF MONTANA



BRAD JOHNSON  
SECRETARY OF STATE

STATE CAPITOL BUILDING  
PO BOX 202801  
HELENA, MT 59620-2801

August 10, 2007

Mr. Scott Seacat  
Legislative Auditor  
Legislative Audit Division  
P.O. Box 201705  
Helena, MT 59620-1705

Dear Mr. Seacat:

Thank you for the opportunity to respond to the performance audit of Montana's compliance with the Help America Vote Act and election-related issues. The audit pointed out a number of successes that highlight Montana's tradition of excellent elections.

The audit also includes fourteen recommendations for areas where the Secretary of State's office can work with county governments to even further improve our elections. Our response to each of those is below.

*Recommendation #1: Work with counties to develop a statewide data integrity improvement plan addressing the updating and maintenance of voter information and uniform implementation throughout the state.*

Concur. This office will issue guidance to county election officials reminding them to use SVRS as a primary – but not exclusive – means of identifying deceased voters, incarcerated felons, and duplicate voter records. We will develop a plan for dealing with the problem of unique identifiers and legacy registrations. And we will develop guidelines on ineligible voter checks and updating voter information.

*Recommendation #2: Improve office controls over SVRS access by: A. Developing procedures to comprehensively review access to the SVRS to ensure authorized individuals have access appropriate to their job duties. B. Working with counties to develop policies and procedures to ensure system users can be uniquely identified.*

Concur. This office has made staff changes and altered staff responsibilities to provide for better SVRS oversight. We will review all SVRS accounts for appropriateness of access level. We will issue guidance to counties on individual user accountability for SVRS desktops.

*Recommendation #3: Assist counties in implementing effective desktop security procedures by: A. Developing SVRS desktop security procedures at the county level. B. Providing counties with*

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desktop security advice and guidance through the SVRS help desk. C. Implementing an audit process to identify security weaknesses at the county level.

Concur. While we have no jurisdiction at this time to enforce on county property, we will issue an election directive on SVRS desktop security procedures consistent with the Interim Security Policy and Interim Security Architecture issued by the state Chief Information Officer. The help desk has already begun providing advice and guidance on the subject. And we will use the pre-existing help desk audit function in a way that leads to identification of any further county-level security weaknesses.

Recommendation #4: Revise the current service level agreement with the Information Technology Services Division to include specific assignment of responsibilities and procedures relating to the SVRS change control process and implementation of the backup system.

Concur. This office sent a draft revision to the service level agreement to ITSD on August 10, and we are awaiting a response.

Recommendation #5: Continue to review and revise training materials and other elections guidance to emphasize the availability of polling place elector ID forms and work with counties to ensure effective representation.

Concur: We will continue to work with counties to emphasize the availability of the polling place elector ID form – an award-winning process developed in this office that complements and exceeds the requirements of HAVA. Facts about the polling place elector ID form will be included in the uniform display referenced in recommendation #6.

Recommendation #6: Collaborate with counties to develop, produce and distribute a uniform voter information display for use in all Montana's polling places.

Concur: We will continue to work with counties to produce another poster for distribution to counties containing all HAVA-mandated voter information – and some additional information, such as the availability of the polling place elector ID form.

Recommendation #7: Lead efforts to mitigate the effects of late registration by: A. Focusing public education on registering prior to Election Day. B. Emphasizing late registration procedures and anti-fraud controls in training for county elections officials.

Concur: This office already focuses intense public education efforts on voter registration before the late registration period. We will continue to work with counties to increase those efforts. We will continue to distribute education and training materials for county election officials and make those materials available in individual visits with the Secretary, regional training sessions, or one-on-one training sessions.

Recommendation #8: Monitor ongoing trends in late registration to determine the impacts on elections administration and, if needed, mitigate future impacts by: A. Rolling-back the late

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registration period to some point prior to Election Day or B. Providing additional resources or guidance to maintain current levels of effort in counties or C. Expanding late registration to a precinct-based procedure.

Concur: This office has already investigated some of these options, and will study which of them will be needed to mitigate future impacts. Although the relationship between late registration usage levels in other states and Montana's relatively low usage is tenuous, we will continue monitoring usage levels here and determining what other options may be needed to mitigate the impact.

Recommendation #9: Continue efforts to transition Montana counties to a common standard for voting systems by: A. Prioritizing availability of remaining HAVA funds for upgrading county voting systems equipment. B. Establishing a common technological standard for voting systems as a strategic priority for the office. C. Determining the need for further legislative guidance relative to voting systems.

Concur: This office will review priorities for remaining HAVA funds and amend the HAVA plan as needed to reflect the priority of upgrading voting systems. A common technological standard for voting systems using precinct counting machines is not possible so long as Montana maintains both polling place and absentee voting options. If necessary, we will seek legislation or other guidance from the legislature.

Recommendation #10: Revise voting system testing procedures to ensure all the different types of elections equipment used in the state are included in the office's random testing procedures.

Concur. Although our current random testing system meets the requirements of statute, there may be a benefit to be gained from exceeding them. We will develop a process to randomly test at least ten percent of different types of voting systems.

Recommendation #11: Work with counties to address inconsistencies in the administration of absentee voting by: A. Revising public education and training efforts to provide increased emphasis on the absentee voting process. B. Reviewing the county absentee voting communications to determine where required voter information could be standardized further. C. Where necessary, seeking statutory revisions to clarify treatment of absentee ballots received in different circumstances.

Concur. We will request that counties supply information about their communications with absentee voters so that we can find areas where further standardization is possible. We will use that information to prepare such revisions as are necessary to our public education efforts and our training efforts concerning absentee voting. We will study the necessity for legislative clarification on the subject of where absentee ballots can be returned. If necessary, we will work with counties to seek that legislation.

Recommendation #12: Continue addressing polling place accessibility issues by: A. Working to identify unmet needs and prioritize allocation of remaining funding based on these needs. B.

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Establishing long-term goals for reducing the number of remaining inaccessible polling places through upgrade or replacement.

Concur. We will continue to work with counties to set a goal of reducing even further the number of inaccessible polling places. We will ask counties to provide information regarding possible improvements to accessibility in polling places, and we will continue to work with counties to prioritize funding based on that information.

Recommendation #13: Update the Election Judges handbook to include specific written instructions on installation of Automark voting systems during polling.

Concur. In addition to the Automark training and materials already provided, we will include specific Automark instructions in the Election Judge's Handbook.

Recommendation #14: Take steps to address the future funding of elections by: A. Updating the state HAVA plan to include any necessary changes in the allocation and distribution of remaining HAVA funding. B. Identifying whether counties can meet the ongoing implementation costs of elections reform efforts following depletion of HAVA grant funding. C. Where necessary, seeking legislative changes to accurately reflect division of responsibility for elections funding and provide a viable basis for long-term implementation of HAVA and other elections reforms.

Concur. We will ask counties to provide information on their ability to meet ongoing implementation costs of HAVA. As we have previously, we will continue to work with counties to amend the HAVA plan as needed to reflect necessary changes in allocation of remaining funding. Based on our analysis of the information provided by counties, we will continue to work with counties to determine whether it is necessary for this office to seek legislation on the subject of elections funding.

I would like to thank the staff of the legislative audit division for their professionalism and cooperation during this audit.

Sincerely,

  
BRAD JOHNSON  
Secretary of State

BJ:sba