

Help America Vote Act

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*Secretary of State*

*State of Nebraska*  
*Amended State Plan*

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## **A Message from Secretary of State John Gale**

In October of 2002, Congress passed and President George Bush signed the Help America Vote Act. This Act was the beginning point in a new era of election administration in the United States.

The Act is uniquely American: it contains federal mandates to the states, but it doesn't federalize the system; it provides funding to the states, but the funding is not entirely just federal money due to the match requirement; the Act requires reporting and accounting but generally relies on the State Election Officers to carry out the goals of the Act in cooperation with local authorities.

In February 2003, the U.S. Congress in its Omnibus Appropriations bill included some \$1.5 billion to begin funding the reforms mandated under HAVA. In order to access its share, each State created a State Plan Commission, which was to be broad-based, inclusive, and provided a voice for the various groups of citizens who expressed concerns that their communities had not been well served. Individuals from the visually impaired and physically handicapped communities particularly come to mind.

This has truly been an historic task. For the past century, the battle that has been fought has been over the issue of *who* shall vote. When our nation was founded, only white male adult landowners could vote. We have come a long way. The struggles to outlaw slavery and enfranchise blacks as citizens, to allow women to vote, and to reduce the voting age to 18 to give our youth a voice in their democracy, were tremendous struggles, finally leading to the Voting Rights Act of 1965, and the Civil Rights Act of 1974.

They were battles over inclusiveness in our democracy.

In 2001, the struggle shifted to issues of the fairness of the election system and the machinery of elections...the process of registering voters, casting ballots, and counting votes. What each State Commission did to implement HAVA became historic and a part of the dynamic of changing the face of elections in America.

For the first time in 100 years, we had an opportunity to review and make significant improvements in our election systems. It was time to invest some money where our ballot boxes are. These federal dollars helped strengthen our elections process by improving access at the polls,

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increasing our technology levels, and helping us educate and train voters and poll workers alike.

The responsibility placed by the Federal government onto state election officials has been taken very seriously. The U.S. Congress allocated unprecedented levels of funding to improve the machinery of elections nationwide, in order to accomplish a new level of fairness, reliability and inclusiveness, nearly uniform across the country. I approached this task as a clear mission delegated to my office, which we would not fail. We used the funds wisely and met the goals squarely. A new form of relationship between state and local election officials was paired with a new level of cooperation that maintained the fair and uniform election process that Nebraska has developed while effectively and efficiently developing processes to encourage every eligible citizen to participate in our system of democracy.

The first step on this journey was the appointment of the State Plan Commission members. I convey my warmest thanks to those members who have participated in the process. The long days and numerous hours spent discussing the intricacies of election administration have been invaluable in the preparation of this Plan and its amendments. I would be remiss if I did not acknowledge the efforts of Ms. Martha Gadberry, who as facilitator of the Commission meetings, has been successful in getting the group to function not only as advocates for their particular constituency, but as a team working together to improve the election process.

The original Plan was intended to be treated as a living document. It served as a changing road map to track not only the successes but also the failed initiatives along the way. To that end, everyone's input was welcomed, not only during the 30- day comment period mandated by the Act, but at any time that this path has been traveled. Please don't hesitate to contact my office with comments, suggestions or criticisms. Help us to make our democratic system be the best it can be to serve America.

With Best Wishes,

John A. Gale  
Secretary of State  
State of Nebraska

## **Executive Summary**

The Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15301-15545 (“HAVA”) following passage by the U.S. Congress was signed into law by the President of the United States George Bush on October 29, 2002. This legislation marked a significant step toward major change in our election systems nationwide. Each participating state is required to appoint a citizen advisory committee to advise the Chief Election Officer in the development of a State Plan to implement HAVA, which Plan is to be available for public comment and input before adoption.

Secretary of State John A. Gale, Chief Election Officer for the State of Nebraska, appointed a sixteen-member citizen advisory commission on February 28, 2003, to help in the development of the State Plan. The Commission is called the Nebraska State Plan Commission. Members include the election officials from Nebraska’s two largest counties, a mid-size county election official, a former President of the Nebraska County Clerks Association, a representative from the Secretary of State’s office and representatives from various advocacy organizations including the disabled community. Secretary Gale took recommendations for these appointments so that the Commission is representative of a wide cross-section of Nebraskans, including those with disabilities and minority designation.

In addition to the role played by Secretary of State Gale and the State Plan Commission, the public has an opportunity for input in the process. In accordance with the Act, there will be a 30 day comment period, and those comments will be considered prior to publication of the plan-- or any amendments to the plan-- in the Federal Register. Written comments may be submitted either through the web site [www.sos.state.ne.us/election/HAVA](http://www.sos.state.ne.us/election/HAVA), which contains details of Nebraska’s efforts under the Help America Vote Act or by writing to the Secretary of State.

The State Plan has as its’ foundation several basic principles that were adhered to in the drafting. These principles include:

Nebraska’s Plan should comply with all federal requirements in the Help America Vote Act of 2002 (HAVA).

The plan should not pass initial costs of the implementation of HAVA onto the counties.

Allocation of adequate funds to purchase equipment to implement the central voter registration system, disability voting requirements, and training mandates should be the primary objectives.

The State Plan was amended in 2004 and 2009 to take into account additional Title III (Requirements Payments) appropriated by Congress. These changes were minor in nature and were described in Section 12. With the appropriation of additional funds in FY 10 and the adoption of the MOVE Act, additional amendments are necessary.

The State Plan consists of 14 sections on topics ranging from voter education and outreach to administration and budgeting for the plan. Section 1 describes the use of the Title II funding for the mandates in the Act. Included are descriptions of the mandates contained in Title III such as a centralized voter registration database, provisional voting, voter identification, and changes to the voter registration process. Several of these, provisional voting, voter identification and voter registration form changes, were addressed through state legislation during the 2003 legislative session.

Section 2 addresses how the funding will be distributed to local election officials or others. The proposal in this section calls for a grant program for voter education and outreach efforts. Section 3 addresses the issues surrounding voter and election official education and training. Notable components of this section include creation of a panel to examine voter turnout issues, an increased role for the Secretary of State's office in training local officials, and a more aggressive approach to ensuring that voters with disabilities are accommodated.

Section 4 outlines the requirements for vote tabulation equipment. The section outlines a plan to place a disabled accessible device in each polling site, while maintaining the current central scan and hand count procedures historically used in Nebraska. These processes, coupled with an education effort, may be used to address second chance voting issues; however, federal appropriations in 2004 have allowed for consideration of the use of precinct scan technology, allowing for the creation of a statewide system of optical scan counting through the use of precinct and central scan equipment.

Section 5 describes the fund established to administer the program funding and Section 6 provides a general budget for the implementation effort. Section 7 addresses maintenance of effort requirements of the Act.

Section 8 describes performance measures for the various elements of the State Plan. Section 9 provides a description of the Administrative Complaint Procedure required by the Act.

Section 10 addresses the Title I or "early out" money and its uses. The current Plan anticipates using those funds to supplement the Title II funding to meet the mandates of the Act.

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Section 11 addresses the State Plan Commission and how the Plan will be amended in the future. Section 12 contains a description of the changes to the State Plan in this amendment. Section 13 lists the members of the State Plan Commission and their procedures used to develop recommendations for this Plan. Section 14 addresses state efforts to implement the MOVE Act and is included as required by the MOVE Act.

This amended document will be made available for public comment for a thirty day period beginning on January 28, 2011. Any person wishing to comment on the plan may either write the Secretary of State at Suite 2300, State Capitol, Lincoln, Nebraska 68509. Comments may also be made on the website, [www.sos.ne.gov/election/HAVA](http://www.sos.ne.gov/election/HAVA).

Following the 30 day comment period, any comments will be reviewed and a final version of the State Plan be submitted for publication in the Federal Register for a 45 day period in March of 2011.

## **Introduction**

The following constitutes the 2009 revised State Plan for the implementation of the Help America Vote Act for the State of Nebraska. The federal statute requires addressing fourteen issues within the plan. Each required item is identified by a separate section.

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

### **Section 1**

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

It is currently estimated that the requirements payment (Title II) to the State of Nebraska will be approximately \$4.9 million for federal fiscal year 2003. In addition, Nebraska anticipates an additional \$8.8 million for federal fiscal year 2004. At this time it appears necessary that the entire amount of the requirements payment will be dedicated to two of the more expensive mandates contained in Title III: the interactive Voter Registration System (Section 303) and providing a Voting System within each polling site that allows members of the disability community to vote in private and unassisted (Section 301(a)(3)). It is also anticipated that at least a portion Title I funds will be necessary to meet these two requirements.

FY 08 and 09 requirement payments total approximately \$1.3 million.

The FY 10 payment is \$413,972.

The requirements of Title III include the following:

Sec. 301 This section describes the requirements for voting systems used at the polling sites. Details of these requirements are contained in below in Section 4.

Sec. 302 This section describes the requirements for what has been termed provisional voting and other voting information.

Through the 2002 election cycle Nebraska statute (Neb. Rev. Stat. 32-914.01 et seq.) provided for a process where a person who had previously registered to vote, but whose name did not appear on the list of eligible voters, could cast a ballot through either the use of a “conditional ballot” used to accommodate fail-safe voting under NVRA, or a provisional ballot for someone who had not changed their residence but for some reason their name did not appear on the list.

These provisions did not completely meet the requirements of Sec. 302, as there were no provisions for allowing the individual to ascertain the disposition of the conditional or provisional ballot.

LB 358, introduced and passed in 2003, combines the conditional and provisional processes into one procedure and provides for the development of a website and toll free line to determine whether the provisional ballot was counted and if not, why. This website and toll free line were set up and operational for the May 11, 2004 primary election.

LB 358 also contains requirements that voter information be posted in each polling location including information on polling hours, instructions on how to vote, voting rights, instructions for certain voters that are required to provide identification, and sample ballots. While some of this information had been required to be posted previously, the provisions of LB 358 meet the requirements of Sec. 302. The required voter information was first posted at the May 11, 2004 primary election and has been used at each subsequent election.

Sec. 303 This section describes the requirements for a statewide interactive voter registration database. Among the requirements are that the system utilize driver’s license numbers and the last four digits of the social security number or in the alternative assign a unique identifier. Other requirements include coordination with other state agency databases and list maintenance procedures as outlined in the National Voter Registration Act.

While Nebraska had a state voter registration database in place, it did not meet the requirements contained in Sec. 303. The state explored either the modification of the current system or a replacement system that meets the requirements. A Request for Proposals was issued in February of 2004 and an agreement for a compliant system was entered into in June of 2004. The agreement calls for the completion of the system in October of 2005. A substantial amount of Title II monies currently estimated at \$4.5 million will be necessary to meet this mandate. See Section 6 (budget information) for additional detail. The deadline for meeting this requirement is January 1, 2004, although a waiver until January 1, 2006 was available and was applied for.

Sec. 303 further requires that various changes be made to the voter registration process including the design of the voter registration form and the confirmation of

the last four digits of the social security number. In addition, agreements with the Department of Motor Vehicles and other state databases are required to provide for list maintenance purposes. LB 359, passed and signed during the 2003

legislative session, contained the required changes and mandates the agreements with other state agencies. New voter registration forms were available in September of 2003. Agreements with the Department of Motor Vehicles, the Bureau of Vital Statistics (death notices) and agencies for felony convictions have been developed.

The section also provides that first time voters, who register by mail, are required to produce identification prior to casting a ballot. This mandate was also met in LB 359 and was implemented for the May 2004 primary and subsequent elections.

## Section 2

**(2) How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of -**

*(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and*

Should funds be available after meeting voting and registration system mandates, the Secretary of State should develop a grant program to encourage voter participation and education among population groups that historically have not been participating in the voting process, including but not limited to youth, disabled persons and minority populations. Such grants should be limited to non governmental, not for profit organizations serving affected voters. No individual grant should exceed \$60,000 per year and preference should be given to organizations that demonstrate an ability to attract other financial resources to maintain programs into the future.

This section has resulted in 3 grants being awarded (1 in the '06 cycle and 2 in the '08 cycle). Grants may continue in future cycles if funding is available.

*(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).*

Any entity receiving grant monies under (2)(A) will comply with any or all federal reporting requirements. Any entity receiving grant monies under (2)(A) has been required to submit a report to the Secretary of State within 12 months after receiving such a grant, that details the activities funded by the grant and a financial audit.

### **Section 3**

**(3) How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.**

The Secretary of State's Office understands the importance of education and training to a successful implementation of HAVA reforms in Nebraska.

The Secretary of State will initiate and plan for centralized, uniform training statewide. This may include but is not limited to providing election officials the training standards, including maintenance of current training efforts; a training manual (both electronic and hard copy) regarding the HAVA requirements; a video with basic information about HAVA to inform county clerks and poll workers; and information about increasing diversity of poll workers and election officials. This will be done by using regional networks for training election officials, such as NACO annual meetings and involving the vendor to provide training on specific election equipment. The Secretary of State's Office will also seek opportunities to collaborate with advocacy and community groups in an effort to inform not only election officials, but the general public as well regarding voter accessibility and procedural changes. This includes but is not limited to the grant program described in Section 2.

Currently, elections and election training are handled mainly at the local level. Training on election issues is provided twice yearly to the County Clerks by the Secretary of State's Office. County officials will continue to bear responsibilities to disseminate training materials and conduct training events within the counties to their poll workers. Content of the training will include, but not be limited to, accessibility issues (especially for the physically and visually impaired); identification requirements for certain first time voters as described in HAVA; changes to provisional voting for HAVA compliance; and information on the complaint procedure.

Voters with disabilities should be made aware of the new accessibility requirements and instructed on how to use any new electronic voting equipment. The Secretary of State's office will do this in a variety of ways, which may include but will not be limited to, producing a Braille brochure for statewide distribution;

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making new electronic voting equipment available in places where people with disabilities or the elderly can get hands-on experience; showing new electronic voting equipment in higher education student unions, high schools and nursing homes and assisted-living facilities; coordinating voter education projects with advocacy and community groups; educating the media through press releases, public access and service announcements; producing video or power point presentations for use by advocacy groups for civic group meetings; improving signage at the polling place to indicate accessibility; and establishing an "Elections Information" website to inform the voters of changes before statewide elections.

County clerks will provide information to the voters regarding the identification requirements for first time voters who register by mail. When students are on college campuses, information on voting place options may be given during orientation activities. College students may also be recruited as poll workers, along with high school students, pursuant to new statutory allowances passed by the Nebraska Legislature.

Training for Election Officials and their staff continues to be an ongoing effort. An annual large group workshop concentrates on federal and state legislative changes, updates to the statewide voter registration database system, reviews on the vote tabulation equipment and new developments in poll worker training. In addition, small group meetings are held regionally across the state to promote open discussion on local problems and concerns. High School poll worker programs and website distribution of outreach materials continues to grow every year. Voting information pamphlets are provided both on-line, in office and distributed to county offices around the state.

The Secretary of State is committed to making voting more attractive and accessible to Nebraska's citizens. Registration forms will be revised to ensure compliance with HAVA reforms and user-friendliness to encourage voter registration. These forms will continue to be distributed in many places, such as the phone book, county clerk visits to high schools, and college voter drives. The Secretary of State will also focus on improving the process of reporting registrations from collaborating agencies, such as Health and Human Services.

Pursuant to LB 569 (2003), Nebraska established a Blue Ribbon Panel to monitor the progress of HAVA election reforms. The Vote Nebraska Initiative began meeting in July of 2003 with a report issued in December of 2004.

The Vote Nebraska Initiative report was available on the Secretary of State's website through the 2006 election cycle. At this time, copies may be obtained by contacting the Secretary of State's office.

## Section 4

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

The requirements of section 301 include the following:

### **Sec. 301 Voting Systems Standards**

**(a)(1)(A)(i) permit the voter to verify ( in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;**

Prior to HAVA Nebraska local jurisdictions used one of two methods for tabulating votes: hand counting of paper ballots or a central optical scan system for paper ballots. Either of these two systems met the requirement that permits the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted.

With the selection of the Automark as the platform for accessible voting and the additional funds made available in FY 04, new optical scan units, both precinct level and central were purchased for all counties in FY 06. Both types of equipment permit the voter to verify selections prior to casting the ballot.

**(a)(1)(A)(ii) provide the voter with the opportunity to (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was other wise unable to change the ballot or correct any error); and**

The voting systems in use prior to HAVA met this requirement. Neb. Rev. Stat. 32-917 allowed a voter to receive a replacement ballot should the ballot be spoiled or an error occur.

The statutory provisions still allow a voter to receive a replacement ballot should the ballot be spoiled or an error occur.

**(a)(1)(A)(iii) if the voter selects more than 1 candidate for a single office—**

**(l) notify the voter that the voter has selected more than 1 candidate for a single office on the ballot;**

**(II) notify the voter before the ballot is cast and counted of the effect of casting multiple for the office;**

The current vote tabulation systems currently used by Nebraska jurisdictions do not meet this requirement. Potential solutions to meeting this requirement (other than the provisions of (B)) would require the use of precinct level optical scanners or the expanded use of new electronic voting equipment at the polling sites. However, at this time the cost of such equipment on a statewide basis would require a disregard for one of the basic tenets of this plan: that costs not be passed onto the local jurisdictions. It is recommended that the current systems in use in the local jurisdictions continue to be used under the provisions of (B), but that this issue be revisited as continued federal funding of the Act becomes clearer.

Since 2004, new optical scan equipment has been purchased by the state for all counties. Precinct based optical scan units, which meet the requirements of subparagraph (A)(iii), were provided to 37 (of 93) counties.

**(a)(1)(B) A state or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central county voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by—**

- (i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for and office; and**
- (ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error)**

The initial federal funding level was insufficient to completely replace the paper ballot and central optical scan systems in use at the time HAVA was adopted. A voter education program was developed to meet the requirements of this subsection. The Secretary of State developed materials that are provided to each voter. Additional notices are posted within the polling site and assistance will be provided if requested.

New central scan units were provided to the remaining 57 counties (Adams Co. received both). As the central scan units are not capable of meeting the provisions of subparagraph (A)(iii), self education materials as outlined in subparagraph (B), have been made available in each polling booth as well as on privacy sleeves and other locations within the polling site.

**(a)(1)(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.**

Voter education developed under this subsection (B) provided instructions and other information to each individual voter so that they may review the information in private and cast their ballot appropriately.

Should funding become available and it is feasible to provide all counties with a precinct level optical scan system, such a system provides a mechanism to preserve the privacy of the voter.

Both the automated notification with precinct based units and the self education materials provided for central scan units preserve the privacy of the voter and confidentiality of the ballot.

**(a)(2) Audit Capacity**

**(A) The voting system shall produce a record with an audit capacity for such system.**

The voting systems in place in Nebraska in 2003 (hand count and central optical scan) met this requirement. Any future equipment purchases to comply with (a)(1)(A)(iii) or (a)(3) shall meet the requirements of this section.

**(a)(2)(B) Manual Audit Capacity**

**(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.**

The voting systems that were in place in Nebraska (hand count and central optical scan) meet this requirement. Any future equipment purchases to comply with (a)(1)(A)(iii) or (a)(3) shall meet the requirements of this section.

The systems provided to the counties (precinct and central scan) utilize a paper ballot that can be used in a manual audit. Such an audit (1% of precincts) was conducted after the '08 election cycle. An audit of 2% of precincts was conducted following the '10 election cycle.

**(a)(2)(B)(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.**

The voting systems in place in Nebraska at the inception of HAVA (hand count and central optical scan) met this requirement. Current state statute (32-917) allows a voter to receive a new ballot for any corrections that are necessary. Any future equipment purchases to comply with (a)(1)(A)(iii) or (a)(3) shall meet the requirements of this section.

**(a)(2)(B)(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.**

The voting systems currently in use in Nebraska (hand count and central optical scan) meet this requirement. Any future equipment purchases to comply with (a)(1)(A)(iii) or (a)(3) shall meet the requirements of this section.

The systems provided to the counties (precinct and central scan) utilize a paper ballot that can be used in a recount. Several recounts have been conducted since the systems have been installed.

**(a)(3) The voting system shall  
(a)(3)(A) be accessible for individuals with disabilities, including nonvisusal accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for others;**

The voting systems in place in Nebraska prior to HAVA (hand count and central optical scan) did not meet this requirement. The Secretary of State purchased equipment for use by the counties that meet the requirements of this section.

To meet this requirement, sufficient Automark voting units were purchased for distribution of one unit for each polling site. The Automark units meet the requirements of (a)(3).

**(a)(3)(B) satisfy the requirement of subparagraph (A) through the use of 1 direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and**

The voting systems in place in Nebraska (hand count and central optical scan) did not meet this requirement. The Secretary of State purchased enough units to allow the placement of at least one piece of accessible voting equipment in each precinct. The Secretary of State may

recommend the consolidation of polling sites, not only for the purposes of this section but also to ensure that all polling sites are accessible.

**(a)(3)(C) if purchased with funds made available under Title II on or after January 1, 2007, meet the voting systems standards for disability access (as outlined in this paragraph).**

Any equipment purchased, either by the counties or by the State, after January 1, 2007 shall meet the disability standards as outlined in (A).

To date, no additional voting systems have been purchased after January 1, 2007.

**(a)(4) The voting system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights of 1965 (42 U.S.C. 1973aa-1a).**

Following the 2000 Census, two Nebraska jurisdictions were required to provide alternative language accessibility. Colfax County is required to provide materials in Spanish and Sheridan County is required to provide assistance in Lakota Sioux. The voting systems in place in Nebraska prior to HAVA were capable of meeting the language accessibility requirements. Systems purchased with Title II funds (Automark, precinct optical scan and central optical scan purchased by the state are capable of meeting not only the current required languages, but such additional languages as may be necessary in the future.

**(a)(5) The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate established under 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.**

The voting systems previously in place in Nebraska meet this requirement. Equipment purchased (Automark, precinct optical scan and central optical scan) have been certified to applicable FEC/EAC standards. Any future purchases of vote tabulation equipment whether by the state or local jurisdictions should not only meet the error rate standards but any additional standards issued by the Election Administration Commission.

**(a)(6) Each state shall adopt uniform and nondiscriminatory standards that define what constitutes a vote...**

Nebraska statute (32-901) defines a valid vote for each of the systems currently in use in Nebraska. The statute was amended through LB 358 to define a valid vote for the voting equipment placed at each polling site pursuant to (a)(3)(B).

**Section 5**

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

Legislative Bill 14, signed into law on February 20, 2003, created the Election Administration Fund. The Election Administration Fund consists of federal funds, state funds, interest, gifts, and grants appropriated for the administration of elections. The Secretary of State uses the fund for voting systems, provisional voting, computerized statewide voter registration lists, voter registration by mail, training or informational materials for election officials and for the general public related to elections, and any other costs related to elections or to implementation of the Help America Vote Act. Any money in the fund available for investment has been invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Since the creation of the fund, several business units have been created to more accurately distinguish between Title I, Title II, State Matches, and interest earned on the components of the fund.

**Section 6**

**(6) The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on -**

- (A) the costs of the activities required to be carried out to meet the requirements of title III;*
- (B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and*
- (C) the portion of the requirements payment which will be used to carry out other activities.*

\*Anticipated Revenue

\*These numbers are based on actual receipts, appropriated amounts and estimates based on currently proposed funding levels. **Fiscal years are based on state fiscal years that run from July 1 to June 30.** While proposed funding levels are below authorization levels in HAVA, this budget is based on conservative estimates.

The table below provides anticipated revenues from FY 08 and 09 federal appropriations as well as the required state match. The Fiscal Year reflects the state fiscal year that it is anticipated funds will be received.

	<b>Fiscal Year 2003</b>	<b>Fiscal Year 2004</b>	<b>Fiscal Year 2005</b>	<b>Fiscal Year 2006</b>	<b>Fiscal Year 2007</b>
<b>Title I Funding</b>	\$5,000,000	\$0	\$0	\$0	\$0
<b>Title II</b>		\$4,920,000	\$8,829,000	\$0	0
<b>State Match</b>	\$260,000	\$465,000	\$0	\$0	\$0
<b>Subtotal</b>	\$5,260,000	\$6,385,000	\$8,829,000	\$0	\$0
<b>*Other State Funding</b>	\$241,000	\$240,000	\$238,000	\$238,000	\$241,000
<b>Total</b>	<b>\$5,501,000</b>	<b>\$6,625,376</b>	<b>\$9,067,173</b>	<b>\$238,000</b>	<b>\$241,000</b>

	<b>Fiscal Year 2008</b>	<b>Fiscal Year 2009</b>	<b>Fiscal Year 2010</b>	<b>Fiscal Year 2010</b>
<b>Title I Funding</b>	\$0	\$0	\$0	\$0
<b>Title II</b>	0	\$0	\$1,271,485	\$413,972
<b>State Match</b>	\$0	\$35,795	\$31,126	\$21,788
<b>Subtotal</b>	\$0	\$35,795	\$1,302,611	\$435,760
<b>*Other State Funding</b>	\$240,000	\$238,000	\$238,000	\$235,000
<b>Total</b>	<b>\$240,000</b>	<b>\$273,795</b>	<b>\$1,540,611</b>	<b>\$670,760</b>

\*This amount (Other State Funding) is similar to previous appropriations for election administration. FY'99-'00 expenditures for election administration totaled \$138,905. Maintenance of effort requirements in

section 7 require a state to maintain the level of expenditures made for the purposes of the requirements payments. As the bulk of the requirements were not addressed or met by the state prior to HAVA, it is believed that no state funds were expended in FY'99-'00 that meet the requirements of section 7. The category is included to show that the state has maintained the historical level of election administration funding. See Section 7 of this plan for further information.

<b>Title III Requirements</b>	<b>Fiscal Year 2003 (actual)</b>	<b>Fiscal Year 2004 (actual)</b>	<b>Fiscal Year 2005(actual)</b>	<b>Fiscal Year 2006(actual)</b>
<b>Disability Equipment</b> (Section 301)	\$0	\$58,000	\$79,000	\$10,420,000
<b>Central VR</b> (Section 303)	\$30,000	\$173,000	\$1,470,000	\$1,480,000
<b>Training and Ed.</b> (Sec. 302, 303)	\$4,000	\$34,000	\$19,000	\$86,000
<b>Administration</b> (State Plan Committee, staffing, overhead)	\$40,000	\$205,000	\$208,400	\$243,000
<b>Total</b>	\$74,000	\$470,000	\$1,776,400	\$12,229,000

<b>Fiscal Year 2007 (actual)</b>	<b>Fiscal Year 2008 (actual)</b>	<b>Fiscal Year 2009 (est.)</b>	<b>Fiscal Year 2010 (est.)</b>	<b>Fiscal Year 2011 (est.)</b>	<b>Fiscal Year 2012 (est.)</b>
\$237,000	1,045,000	605,000	\$525,000	\$370,000	\$370,000
\$443,000	\$135,000	\$1,290,000	\$475,000	\$475,000	\$500,000
\$5,700	\$108,000	\$4,000	\$125,000	\$6,000	\$125,000
\$225,000	\$208,000	\$210,000	\$210,000	\$210,000	\$210,000
\$910,700	\$1,496,000	\$2,109,000	\$1,335,000	\$1,061,000	\$1,205,000

## Section 7

- (7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.**

For Fiscal Year '99-'00, total state expenditures for elections were \$138,905. While none of these funds were used for activities specifically mandated by Title III of the Act, it should be noted that appropriations for Fiscal Years '03-'04 and '04-'05 (LB 407, 2003) for elections (Agency 09, Program 45) were approximately \$240,000 for each of the two fiscal years. This amount is an increase over total election expenditures for FY '99-'00.

The amended table in Section 6 (under "Other State Funding") reflects non HAVA expenditures for FY 06-09. Each years expenditures are in excess of total election expenditures for FY 99-00.

## Section 8

- (8) How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.**

The Secretary of State's office is responsible for the success of HAVA implementation and the meeting of performance goals. Local election officials also play a vital role in keeping information current and monitoring performance goals. The performance goals and specific instructions will be included in the elections manuals. The counties will report their success with the HAVA implementation to the Secretary of State's Office, and the Secretary of State's Office will make these results available to the public.

Performance Goal 1: Central Voter Registration Database

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This database will fully comply with the HAVA guidelines. It will be interactive between the counties and the Secretary of State's Office and will be compatible for updates with the Department of Motor Vehicles and Vital Statistics.

Performance Goal	Central Voter Registration Database
Timetable	303a to be implemented by January 1, 2006 303b to be implemented by January 1, 2004
Criteria used to measure performance	Compliance with HAVA requirements
Officials monitoring goal	Secretary of State, Deputy Secretary for Elections and Elections staff
Update as of 5/2004	Provisions of 303b (ID for mail in registrants) implemented for May 2004 election.
Update as of 5/2009	Project complete and in maintenance mode.

Performance Goal 2: Voter Accessibility

Improving voter accessibility, as required by HAVA, shall include accessibility for individuals with visual and physical impairment and with alternative language issues as determined by Title III, Section 301.

Performance Goal	Improving Voter Accessibility
Timetable	Implemented by January 1, 2006
Criteria used to measure performance	Compliance with HAVA requirements
Officials monitoring goal	Secretary of State, Deputy Secretary for Elections and Elections staff
Update as of 5/2004	Ongoing project. Counties have surveyed sites to determine deficiencies and in some cases consolidated sites.
Update as of 1/2011	Ongoing project. Counties have made improvements utilizing HHS grant funds. Independent surveys of each site completed in 2008.

Performance Goal 3: Provisional Ballots

The Secretary of State will set uniform procedures for provisional ballots to be in compliance with HAVA requirements. This procedure will be included in the elections manual.

Performance Goal	Provisional Ballots
Timetable	Implemented by January 1, 2004
Criteria used to measure performance	Compliance with HAVA provisions
Officials monitoring this goal	Secretary of State, Deputy Secretary for Elections and Elections staff and local election officials
Update as of 5/2004	Provisional ballot system in place for May 2004 election

Performance Goal 4: Voter Education

The Secretary of State's Office is committed to educating the voter regarding changes in election law and plans to implement the ideas expressed in section 3 of the State Plan.

Performance Goal	Voter Education
Timetable	Ongoing implementation to be completed January 1, 2006
Criteria used to measure performance	Compliance with measure described in elections manual. County officials will report any problems to the Secretary of State's Office.
Officials monitoring this goal	Secretary of State, Deputy Secretary for Elections and staff and County Election Officials.
Update as of 5/2004	Ongoing project. Voter education materials distributed to counties and precincts.
Update as of 1/2011	Ongoing project. Continue to distribute education and outreach materials developed in house. In addition have awarded grants to outside groups as provided in section 3. No grants issued for 2010 cycle.

Performance Goal 5: Poll worker training

The Secretary of State will define uniform procedures for poll worker training by local election officials. These standards and processes will be provided in the elections manual.

Performance goal	Poll worker training
Timetable	Implementation beginning January 1, 2004 and ongoing
Criteria used to measure performance	Survey will be sent to poll workers to measure knowledge of new standards and procedures
Officials monitoring this goal	Secretary of State, Deputy Secretary for Elections and staff, Local election officials
Update as of 5/2004	Ongoing project. Both large and small group training sessions held.
Update as of 5/2009	Ongoing project. Have established program of meeting on site with small groups of election officials. In addition have formed Poll worker Advisory committee of local officials to develop uniform materials.

Performance Goal 6: Election Official Training

The Secretary of State will perform extensive training session for local election officials using such regional networks as NACO (Nebraska Association of County Clerks). The Secretary of State's Office will also provide staff and procedures for training of election officials.

Performance goal	Election Official Training
Timetable	Implemented January 1, 2004; ongoing
Criteria used to measure performance	Election officials will be surveyed to measure knowledge of new standards and procedures
Officials monitoring this goal	Secretary of State, Deputy Secretary for Elections and staff
Update as of 1/2011	Ongoing project. Continue to develop training materials on various aspects of election administration. Training DVD for election officials and pollworkers completed.

## **Section 9**

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

An Administrative Complaint Procedure has been developed by the Secretary of State that includes the following provisions:

#### **I. Filing of Complaint and Response**

Any person may file a complaint with the Secretary of State who believes that a violation of Title III of the Help America Vote Act or corresponding sections of state statute has occurred, is occurring or is about to occur. Such complaint shall be filed on a form developed by the Secretary of State and shall contain the name, address and phone number of the person making the complaint, the nature of the violation of Title III of the Help America Vote Act or corresponding state statutes, the date of the violation if the violation had previously occurred and other information deemed necessary by the Secretary of State. The form shall also allow the person making the complaint to indicate whether he or she desires a hearing on the record regarding the complaint. The complaint form shall be signed by the person making the complaint and shall indicate that the person believes the facts contained on the form to be true. The completed form shall be notarized.

The Secretary of State may, prior to hearing, respond to the complaint based upon the complaint and the Secretary of State's own investigation. Such response shall be in writing and may include a remedy. The complainant may waive the request for a hearing upon review of the Secretary of State's response. If the hearing request is not waived the hearing shall be held as described below. The response from the Secretary of State, whether or not favorable to the complainant, shall in no way effect the complainant's right to a hearing under these procedures.

#### **II. Hearing Procedure**

If a hearing is requested, the Secretary of State shall appoint a hearing officer to conduct a hearing on the record. Complaints of a similar nature may be combined for purposes of a hearing on the record. If the hearing officer determines that the complaint has merit, the hearing officer shall prepare a written finding and suggest potential remedies to the Secretary of State. The Secretary of State shall take action to ensure the violation is corrected. If the

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hearing officer determines that there is no violation, the hearing officer shall issue a written finding dismissing the complaint.

If no public hearing is requested, the Secretary of State shall investigate the complaint. If the Secretary of State finds that the complaint has merit, the Secretary of State shall issue a written finding and take action to ensure the violation is corrected. If the Secretary of State determines that there is no violation, the Secretary of State shall issue a written finding dismissing the complaint.

Any written finding, whether by the hearing officer or the Secretary of State, shall be issued within 90 days of the filing of the complaint. This deadline may be waived in writing by the person making the complaint.

### **III. Alternative Dispute Resolution Process**

Should the finding not be issued within 90 days of the filing of the complaint, the complaint shall be submitted to a dispute resolution center approved by the office of Dispute Resolution pursuant to the Dispute Resolution Act (Neb. Rev. Stat. §25-2901 et. seq.) for mediation. Any fees associated with such mediation shall be paid by the Secretary of State. The alternative dispute resolution process shall be completed within 60 days. Any records relating to the complaint shall be made available for the alternative dispute resolution process.

#### **Section 10**

- (10) If the State received any payment under title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.**

As Nebraska had no qualifying punch card precincts, all Title I monies received were under Section 101. A portion of this payment was needed to meet the mandates of Title III. (See Sections 1 and 6 for further information.) However, smaller amounts were used to fund the State Plan development as well as training and education efforts.

#### **Section 11**

- (11) How the State will conduct ongoing management of the plan except that the State may not make any material change in the administration of the plan unless the change...**

The State Plan Commission will continue to exist after the development of this plan and will meet at least once each year to evaluate and make necessary

changes to the State Plan. The State Plan Commission will continue to exist until such time as the Title I and Title II monies are exhausted.

*(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;*

Upon review or suggestion by the State Plan Commission, any material changes to the State Plan shall be published in the Federal Register,

*(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and*

Upon review or suggestion by the State Plan Commission, any material changes to the State Plan shall be published and a period of public comment of not less than thirty days shall be provided.

*(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).*

No material changes to the State Plan shall be effective until at least 30 days after the date of publication in the Federal Register.

## **Section 12**

**(12) In the case of a State with a State Plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State Plan for the previous fiscal year and of how the State succeeded in carrying out the State Plan for such previous fiscal year.**

### **2004 Amendment**

This Plan includes amendments from the plan submitted in fiscal year 2003. Material changes include updating budget figures (Section 6) to reflect additional appropriated funds, both federal and matching, and corresponding planned expenditures. The budget section also includes actual figures (rather than estimates) for fiscal year 2003. Other references to additional appropriated funds are included in Sections 1

Other changes include amending references from “DRE’s” to take into account other types of equipment that may be accessible to the disabled community. Also included are changes where the original plan provided for

actions to be taken that have since been accomplished. Among these changes are provisional balloting, voter ID, voter information and updates in Section 8 regarding performance goals and measures. References to specific dates regarding the State Plan Commission process in FY 2003 and the description of the Commission (Section 13) procedures have also been amended.

#### 2009 Amendment

Amendments in 2009 were added to address federal fund allocations in Federal FY '08 and '09. The most substantive changes are in the budget areas (Section 6) to recognize the FY '08 and '09 funding as well as replacing expenditure estimates for State FY '05 through '08 with actual expenditure levels. In addition, because of the additional funding, expenditure estimates are added through State FY '13.

Most other sections contain amendments to indicate completion of various aspects of the Plan, such as the Central Voter Registration Database and delivery and use of disabled accessible voting systems. Section 8 (Performance Goals) was similarly updated to reflect completed and ongoing projects.

As federal funding provided in FY '08 and '09 was unanticipated, the State Plan Commission recommended, at its May 2008 meeting to continue with the basic tenets of the plan by providing maintenance and upgrades to the voter registration systems and voting systems and eliminating such costs at the county level. However, recognizing that federal funding will not continue forever, the Commission recommended beginning a process to reduce the county election offices' reliance on federal monies.

#### 2011 Amendment

Amendments in 2011 include changes in the revenue charts in Section 5 (p. 18) to reflect FY 10 federal monies and matching funds. The other major change is the addition of Section 14 addressing the MOVE Act.

### Section 13

- (13) A description of the commission which participated in the development of the State Plan in accordance with section 255 and the procedures followed by the commission under such section and section 256.**

On February 28, 2003, Secretary John A. Gale, chief election officer for the state of Nebraska, appointed a sixteen member citizen advisory commission to help in the development of the State Plan. The Commission is called the Nebraska State Plan Commission. Members included the election officials from Nebraska's two largest counties, a mid-size county election official, President of the Nebraska County Clerks Association, a representative from the Secretary of

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State's office and representatives from various advocacy organizations. Secretary Gale took recommendations for these appointments so that the Commission was representative of a wide cross-section of Nebraskans, including the disability and minority communities.

The State Plan Commission held meetings on March 18 and 26, April 7 and 21, and May 12, 2003. The initial State Plan developed from the recommendations of the Commission was released on June 9, 2003. The Plan was open for public comment and review for 30 days. The Plan was also the subject of a Public Hearing held on June 25, 2003. In addition to the public hearing, written comments on the Plan were solicited, either via a website or by other means. Media outlets were contacted to announce the completion of the Plan and the Public Comment period.

The State Plan Commission held additional meetings on November 18, 2003, February 26 and April 1, 2004 to review new developments and prepare suggested amendments to the State Plan Recommendations Report. The revised recommendations were completed in late April of 2004. The amended State Plan was published on June 21, 2004 for the initial 30 day comment period. It is available on the Secretary of State's website at <http://www.sos.state.ne.us/election/HAVA>.

The Commission held meetings in June and November of 2005 and June of 2007 during which updates on HAVA activities were provided. The Commission also met in June 2008, May 2009, and May 2010 to develop recommendations in light of the FY 08, FY 09, and FY 10 federal appropriations as well as updates on HAVA activities.

### **Members of the State Plan Commission:**

<b>Member Name</b>	<b>Office/Group Represented</b>
Carlos Castillo	Douglas County Election Commissioner Office (resigned due to change in employment)
David Phipps	Douglas County Election Commissioner Office
David Shively	Lancaster County Election Commissioner Office
DiAnna Schimek	State Senator/Chair of Government Committee (resigned – no longer member of Legislature)
Bill Avery	State Senator/Chair of Government Committee
Pauletta Gerver	Nebraska Association of County Clerks, Register of Deeds & Election Commissioners

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Carlos Servan	Nebraska Commission of the Blind and Visually Impaired
Kathy Hoell	Statewide Independent Living Council, Inc.
Lois Poppe	League of Women Voters
Wayne Houston	NAACP
Steve Virgil	Nebraska Legal Services (resigned due to change in employment)
Amy Bracht	Assistant Secretary of State (resigned due to change in employment)
Becky Richter	Assistant Secretary of State
Dr. D'Andra Orey	Professor/University of Nebraska—Lincoln (resigned)
Dale Baker	Hall County Election Commissioner
Holly Burns	Hispanic Community Center (resigned)
Dr. Sara Crook	Professor/Peru State College
Tim Shaw	Nebraska Advocacy Services, Inc.
June Remington Pederson	Lincoln Area Agency on Aging

#### **Section 14**

***In the case where a State is seeking a requirements payment made using funds appropriated pursuant to the authorization under section 257(4), the State plan shall contain a description of how the State will use such requirements payment to meet the requirements under the Uniformed and Overseas Absentee Voting Act imposed as a result of the provisions of and amendments made by the Military and Overseas Voter Empowerment Act.'***

Legislation addressing several provisions of the MOVE Act were introduced and passed during 2010 including the electronic transmission of blank ballots.. As Nebraska has had experience transmitting blank ballots and in special cases receiving voted ballots electronically, we do not foresee large

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amounts of resources necessary to accomplish these provisions. Nebraska participated with the FVAP in developing on line transmission for MOVE Act voters.

Another major provision of the Move Act is a web based or toll free mechanism to determine the status of a submitted absentee or early voting ballot. Nebraska modified a feature of our Voter Registration database to accomplish this requirement.

Other requirements, such as forty five day transit time for overseas ballots were placed in Nebraska statutes previously and no waiver was required on this topic.