



## State of Oklahoma Plan for Implementation of the Help America Vote Act of 2002

### **Report on Progress of HAVA Implementation November, 2004**

The purpose of this document is to report the progress of implementation of HAVA in Oklahoma since the completion of the state plan just over one year ago. This document contains no material changes to the plans set forth in the August 18, 2003, version of the state plan.

State Election Board staff, in consultation with County Election Board personnel serving on the Local Election Professionals Working Committee and in the Regional Coordinator program, developed procedures and materials for provisional voting, voter identification requirements, voter information requirements, and administrative complaint procedures that became effective on January 1, 2004. The Secretary of the State Election Board adopted these procedures as emergency rules on December 17, 2003. Following review and approval by the Governor as required by the Oklahoma Administrative Procedures Act, the emergency rules became effective on February 3, 2004 C the date of Oklahoma's Presidential Preferential Primary Election.

State Election Board staff, again in consultation with the Working Committee members and Regional Coordinators, also developed training for County Election Board personnel and for Precinct Officials.

Finally, the Secretary of the State Election Board submitted recommendations to the Oklahoma Legislature both for new law and amendments to existing law that will extend the provisions of HAVA to all elections conducted by County Election Boards in Oklahoma. These recommendations became Senate Bill 1346 which was approved by both the State House of Representatives and the State Senate and was signed by the Governor on June 4, 2004. Senate Bill 1346 becomes effective on July 1, 2005.

Three federal elections have been held so far in 2004 C the Presidential Preferential Primary Election, the regular state Primary Election, and the state Runoff Primary Election C in which the provisional voting, voter identification, and other HAVA-related procedures already in effect have been used. Voter turnout at all these elections was relatively light, so the real test of these new procedures will occur in the General Election on November 2, 2004.



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

- \$ **Implementation of Provisional voting [Sec. 302(a)].** Provisional voting has been implemented for federal elections only by emergency rules which became effective February 3, 2004. In addition to the promulgation, publication, and distribution of the emergency rules, special precinct supplies (provisional ballot affidavit envelopes, informational materials, and containers) were produced and/or purchased by the State Election Board and distributed to County Election Boards; OEMS software modifications were written, tested, and installed; training programs for both County Election Board personnel and Precinct Officials were developed; and materials for said programs were produced and distributed.
  
- \$ **Implementation of voter identification requirements [Sec. 303(b)(2)].** Voter identification requirements have been implemented for federal elections only by emergency rules which became effective on February 3, 2004. In addition to the promulgation of the emergency rules, OEMS software modifications were written and installed to identify voters required to show identification at the polls on federal election days and/or to record receipt of identification submitted with voter registration applications. The instructions that accompany the Oklahoma Voter Registration Application form were revised to include information about identification requirements and to inform applicants of the option to submit identification with the voter registration application form.
  
- \$ **Coordination of state databases [Sec. 303(a)].** No change.
  
- \$ **Upgrades for state voter registration database [Sec. 303(a)].** The Secretary of the State Election Board requested a waiver to delay these upgrades until 2006. Staff members are investigating options, but a specific plan to accomplish the upgrade is not yet in place.
  
- \$ **Polling place technology enhancements [Sec. 301].** State Election Board staff members are investigating available options but a specific plan is not yet in place.
  
- \$ **Design and/or evaluation of new voting device system.** No change.
  
- \$ **Support for newly created federal agencies.** No change.



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- § **Improved process for uniformed services and overseas voters [Title VII and UOCAVA].** State legislation allowing UOCAVA voters to receive and return ballots by fax was implemented by emergency rules effective February 3, 2004. State legislation requiring election officials to accept and count for federal offices absentee ballots received from overseas uniformed services and overseas civilian voters up to fourteen days following the state Runoff Primary Election was implemented by emergency rules which became effective on July 22, 2004. However, no federal offices were on the ballot for the state Runoff Primary Election in 2004.
- § **Improved process for disabled voters [Sec. 301 (a)(3)].** No change.
- § **Improved process for language minority voters [Sec. 301(a)(4)].** All voter information material posted at polling places on election day is now available in Spanish, and whenever possible the Spanish translation is printed side-by-side with the English version. All such materials have been distributed statewide, reaching many more Spanish-speaking voters than would be the case if they were distributed only in the two counties required by the Voting Rights Act to provide Spanish materials.
- § **Improvement in voter outreach programs.** No change.
- § **Study of implementation of all-mail elections in Oklahoma.** No change.
- § **Precinct Official training.** The State Election Board staff recruited a group of County Election Board Secretaries and other personnel to conduct training for Precinct Officials on new procedures and requirements resulting from HAVA. Precinct Official training was conducted in December, 2003, and in January, 2004, in every county and consisted of two parts. The regular Precinct Official training program was presented by the County Election Board Secretary and staff in each county and a special segment devoted to the new provisional voting and voter identification procedures which was conducted by one of the specially trained "HAVA trainers."

**(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**



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**(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).**

No change

**(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 publications listed on pages 11-12 were revised for 2004. No additional progress will occur until decisions concerning a new voting device system have been made.

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

No change

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

No change

**(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.**

Of the initial \$5,000,000.00 payment received in May, 2003, the State Election Board spent \$37,721.90 as of October 31, 2004.

\$29,180.00 Compensation for Provisional Voting Officers for Presidential Preferential Primary Election, Primary Election, and Runoff Primary Election (Compensation for PVOs)



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for the General Election also will be paid from these funds.)

\$7,541.90	HAVA Planning Meetings (Advisory Committee, Working Committee, "HAVA Trainers" training, and HAVA Training for Precinct Officials)
\$1,000.00	Other

**(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.**

No change

**(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.**

No change

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

The Secretary of the State Election Board promulgated emergency rules establishing the complaint procedure required by section 402 of HAVA. The emergency rules were approved by the Governor on January 28 and became effective on February 3, 2004. Following is a summary of the procedure.

A complaint must be made in writing and must be signed and sworn by the complainant before a Notary Public. A complaint must include at least the following information: the complainant's name and mailing address, the nature of the complaint, the nature of the desired solution, and a request for a hearing, if one is desired. Complaints are submitted to the Secretary of the State Election Board. Immediately upon receipt of a complaint, a State Election Board staff member marks the original document with a "received" stamp that includes the date, assigns a unique case number, sets the date and time for a hearing if one is requested, and issues an Order for Hearing. The Secretary reviews the written complaint and assigns one or more staff members to investigate the allegations in the complaint.



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In the event a hearing is scheduled, the Secretary serves as the hearing officer to hear any testimony and review any evidence that may be presented by the complainant, and also reviews the results of the staff investigation. Within 90 days of the receipt of a complaint, the Secretary determines whether a violation of title III has occurred. If no violation of title III is found, the Secretary dismisses the complaint. If a violation is found to have occurred, the Secretary provides a remedy. The Secretary shall make and publish a written report of the final determination.

If the Secretary fails to meet the 90-day deadline, the complaint shall be resolved through arbitration within an additional 60 days. The Secretary shall be represented by the state Attorney General's office and the complainant by chosen legal counsel. An arbitrator shall hear testimony and review evidence as necessary and shall negotiate a resolution of the complaint. The arbitrator's decision is final and binding upon all parties.

The emergency rules were published in *The Oklahoma Register* on March 1, 2004 (Volume 21, Number 9, page 561 et seq). Following the adoption, approval and publication of the emergency rules, the State Election Board staff discovered that some text had been inadvertently omitted from Section 230:55-9-7. The section was subsequently adopted again with the missing text restored and the section was again approved by the Governor and became effective on July 22, 2004. The section was again published in *The Oklahoma Register* on September 1, 2004, (Volume 21, Number 20, page 3152 et seq) and per Oklahoma law, it supersedes the original version, but has the same expiration date (July 14, 2005) as the original. The emergency rules are available online at [www.sos.state.ok.us](http://www.sos.state.ok.us).

The Secretary of the State Election Board intends to initiate a permanent rulemaking action on these rules in either December, 2004, or January, 2005, with the intent of having permanent rules for the complaint procedure in effect no later than July 14, 2005. The permanent rulemaking process in Oklahoma includes a 30-day public comment period prior to the adoption of permanent rules, review and approval by the legislature and the Governor after adoption, and finally, publication in the *Register* prior to becoming effective.

**(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.**

Of the several activities listed, those concerning training for County Election Board personnel and Precinct Officials, promulgation of emergency rules, and revision of various forms and publications all have been accomplished.

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



- (A) is developed and published in the *Federal Register* in accordance with section 255 in the same manner as the State plan;
- (B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and
- (C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the *Federal Register* in accordance with subparagraph (A).

No change

**(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.**

Oklahoma's original state plan was completed and submitted to the Federal Election Commission in August, 2003. It was published by the Election Assistance Commission in the *Federal Register* on March 24, 2004. The state plan has been reviewed by State Election Board staff and this document developed to identify the areas in which specific tasks have been completed or in which progress has occurred, and those in which no action has yet been taken.

This document has been circulated to the Advisory Committee members and all have approved its contents.

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

A member of the original State Plan Advisory Committee, Tulsa County Election Board Secretary Scott Orbison, died in April, 2004. Gene Pace, the new Tulsa County Election Board Secretary, will assume the place previously occupied by Mr. Orbison on the Advisory Committee in the event that future action by the committee is necessary.

The State Plan Advisory Committee has not met since June 3, 2003, when the original state plan was approved for release for public comment. While no additional meetings are planned, the members received a copy of this document to review and approve.

State Election Board Assistant Secretary Carol Slater, whose knowledge and experience were



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invaluable and irreplaceable assets to the Oklahoma election system, died on July 31, 2004. The position of Assistant Secretary has not yet been filled.

The Local Election Professional Working Committee added a new member, Wagoner County Election Board Secretary Jason Rousselot, late in 2003. The Working Committee has met twice in 2004 to review the provisional voting and voter identification procedures and recommend any necessary changes.

The first of these meetings was held on April 23, 2004, and the members had several important recommendations as a result of having used the procedures on February 3, 2004, in Oklahoma's Presidential Preferential Primary Election. The emergency rules were subsequently amended and submitted for approval by Governor Brad Henry prior to the regular state Primary Election scheduled on July 27, 2004.

The second meeting was held September 30, 2004, to again review the procedures and to evaluate the changes made and implemented in the Primary and Runoff Primary Elections. The committee had no additional recommendations for change.





## **Appendix A: Administrative Complaint Procedure**

Following are the emergency administrative rules adopted by the Secretary of the State Election Board which became effective on February 3, 2004. These rules were adopted in accordance with the requirements and procedures of Oklahoma Administrative Procedures Act [75 O.S. ' 250 et seq]. The rules were published in the *Oklahoma Register* on March 1, 2004. No public comments have been received. An error was discovered in one section following publication. A small amount of text was inadvertently omitted from the section. The error was corrected by adopting the section again and submitting it for gubernatorial approval as required by state law. The correction was published in the *Oklahoma Register* on September 1, 2004. No public comments have been received.

The rules will be adopted under permanent rulemaking procedures and submitted for gubernatorial and legislative review early in 2005. Permanent rules will be in effect no later than July 1, 2005.

The emergency rules currently are available online at <http://www.sos.state.ok.us/oar>. Official copies are available only from the office of the Secretary of State. An order form and price information is available on the website referenced above. Unofficial copies are available from the State Election Board.

**Oklahoma Administrative Code**  
**Title 230. State Election Board**  
**Chapter 55. Help America Vote Act Procedures**  
**Subchapter 9. Complaints**

### **230:55-9-1. Purpose**

The purpose of the rules in this subchapter is to establish a procedure to receive, investigate and resolve complaints of alleged violations of the provisions and requirements of title III of the Help America Vote Act of 2002 (HAVA). This procedure is required by title IV of HAVA.

### **230:55-9-2. Complaints**

(a) Any person who believes that a violation of title III of HAVA has occurred, is occurring, or is about to occur, may file a complaint with the Secretary of the State Election Board. Any such complaint shall be in writing, shall be notarized, and shall be signed and sworn by the complainant. A complaint shall include at least the following information.

- (1) Complainant's name and mailing address
- (2) The nature of the complaint



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- (3) The nature of the solution sought.
  - (4) A request for a hearing on the record, if desired. (A hearing shall be required only if requested in the complaint.)
  - (5) Any additional information pertinent to the complaint.
- (b) The Secretary of the State Election Board shall provide, upon request, a form to be used to make a written complaint. Use of the form is not required. Any written complaint containing the information outlined in (a) of this Section shall be accepted.

### **230:55-9-3. Receiving complaints**

Upon receipt of a written complaint alleging a violation of title III of HAVA, the Secretary of the State Election Board shall cause the following steps to be performed.

- (1) The original complaint shall be marked with a "received" stamp that includes the date.
- (2) A State Election Board staff member shall assign a unique case number to the complaint.
- (3) If the complaint includes a request for a hearing on the record, the Secretary shall set a date and time for the hearing and shall issue an Order for Hearing.

### **230:55-9-4. Investigation of complaint**

The Secretary of the State Election Board shall review the complaint and shall assign one or more members of the State Election Board staff to investigate the allegations contained in the complaint. Specific investigatory procedures shall be determined in consultation with the office of the Attorney General.

### **230:55-9-5. Hearing**

In the event that the complainant requests a hearing on the record, the Secretary of the State Election Board shall serve as the hearing officer. In the absence of the Secretary, the Assistant Secretary of the State Election Board shall serve as hearing officer. The Secretary shall hear any testimony and shall review any evidence offered by the complainant.

### **230:55-9-6. Resolution of complaint**

Not more than 90 days following the receipt of a complaint, the Secretary of the State Election Board shall make a final determination with respect to the complaint. If the Secretary finds that there has been no violation of title III of HAVA, the Secretary shall dismiss the complaint. In the event the Secretary finds that a violation of title III of HAVA has occurred, the Secretary shall provide a remedy. The Secretary shall publish the results of the investigation and the final determination.



**230:55-9-7. Alternative dispute resolution for complaint**

If the Secretary of the State Election Board fails to meet the deadline for making a final determination as provided in 230:55-9-6, the complaint shall be resolved within 60 days under the following procedure.

(1) The Secretary of the State Election Board shall be represented by the office of the Attorney General.

(2) The complainant may be represented by his or her own chosen legal counsel ~~or by a certified arbitrator.~~

(3) ~~The parties shall negotiate.~~ A certified arbitrator shall be engaged to hear the complaint and to conduct negotiations between the parties to reach a satisfactory resolution of the complaint. The arbitrator shall be authorized to resolve the complaint and the arbitrator's decision shall be binding on all parties.

[In this section, over striking represents text removed and underscoring represents text added. These changes were made in a second emergency rulemaking action which became effective on July 22, 2004.]



**Appendix B: Statistics on provisional voting from 2004 elections**

<b>Election Date – 02/03/2004</b>											
			-----Ballots Not Counted-----								
Reason Issued	Cntd	Part Cntd	DIS	NID	NR	PCT	PTY	Total	Total		
ID Required	35	0	0	1	0	0	0	1	36		
Not on Registry	27	0	0	0	84	26	81	191	218		
	62	0	0	1	84	26	81	192	254		

<b>Election Date – 07/27/2004</b>											
			-----Ballots Not Counted-----								
Reason Issued	Cntd	Part Cntd	DIS	NID	NR	PCT	PTY	Total	Total		
ID Required	14	0	0	0	0	0	2	2	16		
Not on Registry	23	1	0	0	78	17	55	150	174		
	37	1	0	0	78	17	57	152	190		

<b>Election Date – 08/24/2004</b>											
			-----Ballots Not Counted-----								
Reason Issued	Cntd	Part Cntd	DIS	NID	NR	PCT	PTY	Total	Total		
ID Required											
Not on Registry	5	0	0	0	1	2	5	8	13		
	5	0	0	0	1	2	5	8	13		

Cntd = Counted  
 Part Cntd = Partially Counted  
 DIS = Wrong District  
 NID = No Identification  
 NR = Not Registered  
 PCT = Wrong Precinct  
 PTY = Wrong Party



## Appendix C: Meeting summaries from Working Committee meetings

### Help America Vote Act Local Election Professionals Working Committee April 7, 2003

#### Meeting Summary

The third meeting of the Local Election Professionals Working Committee was held Monday, April 7, 2003, in the offices of the Oklahoma County Election Board. The following committee members were present: **Doug Sanderson**, Oklahoma County Election Board Secretary; **Joy Naifeh**, Creek County Election Board Secretary; **Terri Thomas**, Rogers County Election Board Secretary; **Joyce Thornburgh**, Alfalfa County Election Board Secretary; **Joyce Smith**, Grady County Election Board Secretary; **Paula Roberts**, Cleveland County Election Board Secretary; **Pam Strawn**, Cleveland County Election Board Assistant Secretary; **Connie Parnell**, Cherokee County Election Board Secretary; and **Shelly Boggs**, Tulsa County Election Board Assistant Secretary.

In addition, the following members of the State Election Board staff were present: **Michael Clingman**, Secretary; **Carol Slater**, Assistant Secretary; **Fran Roach**, Support Services Director; **Montie Fisher**, Information Services Director; **Theresa Potthoff**, Election Services Director; **Carol Morris**, Training Coordinator; **Karen Mobly**, Regional Coordinator Supervisor; **Suzanne Cox**, Publications Editor; and **Vada Holstein**, Information Representative.

#### Voting Device Systems

Montie Fisher and Theresa Potthoff reported on their recent visit to an election systems trade show in Jackson, Mississippi, organized by the Mississippi Secretary of State's office for the benefit of county election officials in that state who are considering the purchase of new, HAVA-compliant voting device and voter registration database systems. Officials from other states also were invited to the event.

#### Provisional Voting Study Group Report

Since the last meeting, Doug Sanderson organized study groups among the committee members to consider provisional voting requirements and ways in which provisional voting might be implemented in Oklahoma. The group presented the results of their work.



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### **Next Meeting**

The next meeting has been set tentatively for Tuesday, May 6, at 9:30 a.m. in the offices of the Oklahoma County Election Board. The meeting adjourned at approximately 3 p.m.



**Help America Vote Act  
Local Election Professionals Working Committee  
September 30, 2004**

**Meeting Summary**

The Local Election Professionals Working Committee met at 9:30 a.m. Thursday, September 30, 2004, at the office of the Oklahoma County Election Board. The following members and guests attended: **Joyce Thornburgh**, Alfalfa County Election Board Secretary; **Connie Parnell**, Cherokee County Election Board Secretary; **Paula Roberts**, Cleveland County Election Board Secretary; **Pam Strawn**, Cleveland County Election Board Assistant Secretary; **Joy Naifeh**, Creek County Election Board Secretary; **Joyce Smith**, Grady County Election Board Secretary; **Doug Sanderson**, Oklahoma County Election Board Secretary; **Terri Thomas**, Rogers County Election Board Secretary; **Shelly Boggs**, Tulsa County Election Board Assistant Secretary; **Jason Rousselot**, Wagoner County Election Board Secretary; and **Karen Stark**, Wagoner County Election Board Assistant Secretary.

The following members of the State Election Board staff attended: **Michael Clingman**, Secretary; **Fran Roach**, Director of Support Services; **Montie Fisher**, Director of Information Services; **Theresa Potthoff**, Director of Election Services; **Karen Mobly**, Regional Coordinator Supervisor; **Carol Morris**, Training Coordinator; **Suzanne Cox**, Publications Editor, and **Vada Holstein**, Information Representative.

This meeting was called to discuss the implementation of provisional voting and voter identification requirements to date and to identify any aspects of the procedures that should not be carried forward into the permanent rules that will be adopted early in 2005. Other topics of discussion included the status of certain federal lawsuits, controversy surrounding a national voter registration project by the NAACP, concerns about homeland security as it pertains to the election process, and, briefly, the next step toward HAVA compliance C upgrading the voter registration database and voting equipment before the scheduled federal elections in 2006.

The committee may meet again in December or January to review a draft of the permanent rules and to discuss plans for the database and voting system upgrades.