



Office of the Secretary of State

It Must Do More to Ensure Funds Provided Under the
Federal Help America Vote Act Are Spent Effectively

Report 2012-112

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August 8, 2013

2012-112

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report concerning the Office of the Secretary of State's (Office) administration of funds provided under the federal Help America Vote Act of 2002 (HAVA).

This report concludes that the State has not spent HAVA funds effectively. Some counties have collectively spent millions of federal HAVA funds on voting systems they cannot fully use. Under state law, counties cannot purchase new voting systems unless such systems have been approved by the secretary of state. However, different secretaries of state have reached different conclusions on the suitability of counties using certain voting systems. Although we do not question these different conclusions, we expected to see state regulations defining the secretary of state's expectations and the voting system approval process. Regulations serve as an important tool for ensuring consistency and for providing the regulated community—in this case those who sell and purchase voting systems—with certainty. Many counties reported having fully spent their HAVA grant funds while others indicated that they are using aging voting systems or are waiting for vendors to develop new systems.

The Legislature would have increased flexibility to decide how best to spend remaining HAVA funds if the Office declared the State's compliance with certain HAVA requirements to the federal government. As of June 30, 2012, the State had more than \$131 million in HAVA funds earning interest in the State's Special Deposit Fund. The Office's reluctance to declare the State's compliance with HAVA appears to be the result of its desire to reserve HAVA funds for the deployment of VoteCal, which will replace the current CalVoter system as California's statewide computerized voter registration list. However, the Office's first attempt to develop VoteCal failed costing millions of dollars, and limited bidder competition on the second attempt raises concerns for future success. Our audit also noted that the Office could enhance the value of its annual HAVA spending plan—which serves as a key transparency and accountability tool for the Legislature—if it contained spending information that agreed with its accounting records. Finally, we noted that the Office can do more to implement a key provision of the National Voter Registration Act to potentially increase voter registration.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Summary

Results in Brief

The federal Help America Vote Act of 2002 (HAVA) provided more than \$380 million in federal funding to California to help improve the State's administration of elections by complying with requirements contained in three different sections of the act. These three sections provide funding for activities such as educating voters, training election officials and poll workers, replacing punch card voting systems, and complying with HAVA Title III (Title III) requirements. Among other provisions, Title III requires the Office of the Secretary of State (Office) to meet voter information criteria, to upgrade voting systems in all California voting precincts so as to meet HAVA's voting system standards, and to develop and deploy a statewide computerized voter registration list. Once in compliance with Title III, the Office can declare its compliance to the federal Election Assistance Commission (EAC). This would provide the Legislature with greater flexibility in deciding how best to spend the remaining HAVA funds.

However, the State has not effectively spent HAVA funds for new voting systems. Specifically, over \$22 million in HAVA funds have been spent on replacing voting systems with new systems that counties and voters cannot fully use. This problem resulted from various secretaries of state reaching different conclusions as to whether particular direct recording electronic voting systems—such as computer-based push-button or touch screen systems—were suitable for use in California. As a result, some counties that used HAVA funds to buy certain voting systems subsequently found that they could no longer use these systems or could use them only with significant restrictions. State law requires that all voting systems used in California be approved by the secretary of state.¹ At the same time, the secretary of state may, according to state law, withdraw approval of voting systems with sufficient notice should he or she later deem them unsuitable. Adding to the problem, there appears to be a lack of clarity for the counties buying voting systems, the manufacturers who make them, and the general public as to what California's expectations are for its voting systems and what standards are being applied as part of the secretary of state's process for voting system approval. State law has required the Office to develop regulations that define this process since 1994; however, the Office has not adopted such regulations, although it currently hopes to have them in effect sometime in 2015. Our survey of all 58 California counties

Audit Highlights . . .

Our audit of the Office of the Secretary of State's (Office) administration of the federal Help America Vote Act of 2002 (HAVA) funds highlighted the following:

- » *The State has not effectively spent HAVA funds for new voting systems; over \$22 million has been spent on replacing voting systems with new systems that counties and voters cannot fully use.*
- » *The Office has not adopted regulations that define the State's process for voting system approval, as required by state law.*
- » *Many counties need additional funding to replace their voting systems and some have concerns about the Office's process for voting system approval or are waiting for vendors to develop new systems.*
- » *The Office has not declared its compliance with certain HAVA requirements to the federal government, which would enable the Legislature to determine how best to appropriate the remaining HAVA funds.*
- » *The first attempt to develop VoteCal failed, costing the State at least \$4.6 million.*
- » *The Office's practice of providing the Legislature with financial information that does not come from its accounting system unnecessarily weakens a key accountability and transparency tool.*
- » *The Office can do more to implement important requirements of the National Voter Registration Act to increase the rates of voter registration.*

¹ Senate Bill 360 of the 2013–14 Regular Session of the Legislature, if enacted, would allow the secretary of state to certify or conditionally approve voting systems independently of the voluntary federal qualification and certification process.

found that a number need additional funding to replace their voting systems, and some expressed concern about the Office's process for voting system approval, highlighting both the conflicting guidance coming from the Office as to what systems can be used and the lack of vendors bringing forward new voting systems.

Furthermore, if the Office takes certain actions, the Legislature would have greater flexibility to decide how best to appropriate the remaining HAVA funds, such as providing counties with additional funding for voting system replacement or other activities. According to the Office and our own analysis, the Office is in full compliance with Title III. Therefore, the Office could reasonably declare its compliance to the EAC, thus freeing up the remaining \$131 million in HAVA funds for any purpose related to HAVA that the Legislature deems sufficiently important.²

However, the Office has chosen not to declare its compliance because it has yet to successfully deploy a new statewide computerized voter registration list called VoteCal, which it committed to completing under an agreement it executed with the United States Department of Justice (Justice). During our audit, the deputy secretary of state for HAVA activities explained that in addition to its agreement with Justice, the Office is pursuing VoteCal because its current system—CalVoter—is old, inefficient, and not sustainable. Although the Office may have valid reasons for pursuing VoteCal, the lack of a fully deployed VoteCal system should not prevent it from declaring the State's compliance with HAVA to the EAC. Doing so would enable the Legislature to determine how best to use the remaining HAVA funds. After already costing the State at least \$4.6 million due to a failed contract on its first attempt to implement VoteCal, the Office's total budget for the VoteCal project is \$98.2 million through fiscal year 2016–17.

Moreover, the Office could enhance the value of the annual HAVA spending plan it provides to the Legislature. Currently, the historical spending information contained in the HAVA spending plan is not based on information from the Office's accounting system. In some instances the previous HAVA spending differed significantly—sometimes by millions of dollars—from the Office's official accounting records. The Office's acting deputy secretary of state for operations stated that the Office never intended for the spending plan's historical spending data to be based on its financial records, explaining that the document is simply a planning tool and that the Legislature has not complained about the spending information previously provided. Nevertheless, the Office's practice of providing

² This amount represents unappropriated HAVA funds remaining in the State's Special Deposit Fund as of June 2012.

the Legislature with financial information that does not come from its accounting system unnecessarily weakens a key accountability and transparency tool for the Legislature and limits its ability to effectively evaluate HAVA's costs in relation to its policy outcomes.

In addition, our review of the State's implementation of the National Voter Registration Act of 1993 (NVRA) found that a key component of this law—sometimes referred to as the “Motor Voter” law—is the requirement that an application submitted for a driver's license simultaneously serve as an application to register to vote for an eligible citizen. However, our visits to some California Department of Motor Vehicles (DMV) offices in Sacramento found that the driver's license application does not act as a simultaneous application for voter registration. Instead, applicants for a driver's license complete a driver's license application form and receive a separate voter registration card. Although we recognize that these practices were designed to respond to a 1995 court order, that court order was lifted in 1999, and California has not taken the steps necessary since then to come into full compliance with this important NVRA requirement. As a result, applicants for driver's licenses must provide duplicate information—such as their name, address, date of birth, and other information—when registering to vote. A strict reading of the NVRA statute prevents states from requiring duplicate information, stating that the voter registration application portion of the driver's license application “may not require any information that duplicates information required in the driver's license portion of the form.”

Finally, our audit found that although the State may have met the minimum requirements for designating voter registration agencies under the NVRA, it should designate more agencies. For example, as an unemployment compensation office, the California Employment Development Department plays an important service role and could serve as a voter registration agency. Also, the State could designate other state departments and agencies as well as county- and city-based entities that have significant interaction with the public. These additional designations could, in our view, further increase the rates of voter registration in California.

Recommendations

To ensure that the public, county registrars, and potential voting system developers understand how the secretary of state will make voting system approval decisions, the Office should make it a priority to develop regulations describing voting system standards in accordance with state law. It should begin the formal rule-making process by January 2014.

To ensure that the State has maximum flexibility in how it spends the remaining HAVA funds, the Office should do the following:

- Formally renegotiate its agreement with Justice by discussing the need to pursue VoteCal and obtaining clarity as to what aspect of the current CalVoter system, if any, does not meet HAVA's requirements.
- Report, by December 2013, the results of these discussions with Justice to the Legislature. If the Office continues to believe it is compliant with Title III requirements, it should take the necessary steps to maximize the Legislature's flexibility for deciding how best to appropriate the remaining HAVA funds.

To enhance the value of the HAVA spending plan as a transparency and accountability tool for the Legislature, the Office should make the following modifications to its annual HAVA spending plan:

- Clearly state the methodology used to report prior HAVA expenditures in the HAVA spending plan. Such a methodology should use the financial information contained in its accounting system.
- Reconcile the prior HAVA expenditures with the year-end financial reports the Office provides to the California State Controller's Office.

To ensure that the State complies with the NVRA, the Office should take all necessary steps, including seeking any necessary legislative changes, and work with the DMV to modify the driver's license application so that it may simultaneously serve as a form for voter registration.

To maximize voter registration, the State should designate additional state and local entities that could reasonably assist with increasing voter registration.

Agency Comments

The Office agreed with all but one of our recommendations. The Office disagrees with our recommendation that it should revise its record retention policy for long-term federal awards such as HAVA because it believes its current policy meets the federal requirements. We discuss this issue on page 15 and this recommendation appears on page 36.

Introduction

Background

The federal Help America Vote Act of 2002 (HAVA) began providing federal funding to states after the disputed presidential election of November 2000. As a condition of receiving funding, HAVA requires—among other provisions—that states improve the administration of federal elections, use voting systems that meet certain standards, and develop a statewide computerized voter registration list. The federal Election Assistance Commission (EAC) plays an important role in administering HAVA, and California has received more than \$380 million in funding to implement HAVA’s provisions since fiscal year 2002–03. California received most of its HAVA funding by the end of fiscal year 2004–05 and continues to earn interest on unused HAVA funds. According to federal requirements, interest earned on idle HAVA funds must be used for HAVA activities. As of June 30, 2012, the Office of the Secretary of State (Office) had roughly \$131 million in unappropriated HAVA funds that were earning interest in the State’s Special Deposit Fund.

HAVA Provides Federal Funding for Three Primary Purposes

California has received roughly \$380 million under HAVA to meet three primary requirements. Those requirements and related funding are shown in Table 1 on the following page.

As shown in Table 1, the \$27.3 million of HAVA Section 101 funding the Office received represents the “flexible” pool of HAVA money. The Office can exercise considerable discretion when spending these funds, as long as the activities fall under the umbrella of improving the administration of federal elections. Examples of such activities include, but are not limited to, providing grants to counties for training poll workers and election officials; developing a HAVA state plan; educating voters on their rights, voting procedures, and voting technology; and improving the accessibility and quantity of polling places. California also received \$57.3 million in HAVA Section 102 funding to provide grants to 30 counties to replace their punch card and lever voting systems. In November 2006, then Secretary of State Bruce McPherson filed a declaration with the EAC that all of these counties had replaced their punch card and lever voting systems with voting systems that meet the requirements of HAVA Section 301, discussed on the following page.

Table 1
Summary of Remaining Funding and Key Activities Under the Federal Help America Vote Act of 2002
as of June 30, 2012

Federal Help America Vote Act of 2002 (HAVA) Section 101 Funds— To Improve the Administration of Elections	Received	Unappropriated Balance Remaining in the State's Special Deposit Fund
Key Activities Remaining		
Various: HAVA Section 101 funds represent “flexible” funding that the secretary of state can use for a variety of purposes, such as educating voters about their voting rights and providing grants to counties for training election officials and poll workers. HAVA Section 101 funds can also be used to achieve compliance with HAVA Title III (Title III) requirements (which are principally funded with HAVA Section 251 funds).	\$27,340,830.00	\$4,244,496.39
HAVA Section 102 Funds—To Replace Punch Card Voting Systems		
Key Activities Remaining		
None: A former secretary of state certified to the federal Election Assistance Commission (EAC) in November 2006 that all HAVA Section 102 funds had been disbursed or obligated. HAVA provided these funds for certain “qualifying precincts” that had used lever or punch card voting systems during the November 2000 general election.	57,322,707.00	0
HAVA Section 251 Funds—To Comply With Title III Requirements		
Key Activities Remaining		
Various: The secretary of state has remaining obligations in two key areas: providing grant funding to counties for the replacement of their voting systems (per HAVA Section 301) and deploying VoteCal, a statewide computerized voter registration list (per HAVA Section 303). Once the secretary of state declares its compliance with all Title III requirements, any remaining funds can be used to improve the administration of federal elections.	296,228,627.00	126,799,741.77
Totals	\$380,892,164.00	\$131,044,238.16

Sources: Federal EAC reports, Office of the Secretary of State’s (Office) financial reports to the California State Controller’s Office for fiscal year 2011–12, and other documents provided by the Office.

Note: The Office receives additional federal funding associated with HAVA to improve the accessibility of polling places for the disabled and to research voting system technology. We have not shown these funds in the table because the amounts received are not a material component of HAVA and are not received by the Office in advance for deposit in the State’s Special Deposit Fund.

California was awarded its most substantial component of HAVA funding to comply with HAVA Title III (Title III) requirements. What follows is a description of the significant requirements of Title III. As shown in Table 1, California was awarded more than \$296 million in Section 251 funding. However, unlike the other HAVA funds, in order to receive the Section 251 funds, the State had to first develop a HAVA state plan that described how the Office intended to use the funds to meet the requirements in Title III. Significant Title III requirements are voting system standards, provisional voting and voting information requirements, and a statewide computerized voter registration list. Appendix C describes certain key requirements and how the Office has met those requirements, while certain elements of Title III are discussed next.

HAVA Section 301 details the standards all voting systems must meet to comply with HAVA's requirements. These standards are listed in the text box. The Office has principally met Section 301 requirements by allocating \$195 million to counties to replace their voting systems. Some counties have spent all of their funds, while others have not, as discussed later in the report. Nevertheless, the Office believes that all counties currently use HAVA-compliant voting systems, based on the Office's requirement that all voting systems first obtain federal certification before the secretary of state approves them for use in California.

HAVA Section 303 requires each state to develop a statewide computerized voter registration list that meets the requirements listed in the text box on the following page. To do so, the Office modified the CalVoter database it was using at the time to meet these HAVA requirements. CalVoter is a "bottom-up" data system. Specifically, each county maintains voter information on its own election management system (EMS). When a county receives a new voter registration record or a change to an existing record, the county must update CalVoter on the same business day it updates its EMS. A voter registration record can change due to a voter's death, felony conviction, or change of address. As discussed later in the report, the Office anticipates spending \$98 million in HAVA funds to replace CalVoter with a new system called VoteCal.

Voting System Standards Under the Federal Help America Vote Act of 2002

Voting systems must:

- Permit the voter to verify his or her choices on the ballot privately and independently.
- Permit the voter to correct voting errors before casting the ballot.
- Notify the voter that he or she has selected more than one candidate for a single office and the consequences.
- Produce a record with an audit capacity.
- Provide accessibility for voters with disabilities (including nonvisual accessibility for those who are blind).
- Provide alternative language formats pursuant to bilingual election requirements.
- Comply with specified error rate standards for counting ballots (no more than one error per 500,000 ballot positions).

Each state shall also adopt uniform and nondiscriminatory standards that define what constitutes a vote.

Source: Title 42 of the United States Code, Section 15481.

The National Voter Registration Act of 1993 Requires States to Take Steps to Help Maximize Voter Registration

The National Voter Registration Act of 1993 (NVRA) is commonly referred to as the "Motor Voter" law. A principal component of the NVRA is a provision that voters be able to register to vote at local California Department of Motor Vehicles offices. It also requires the State to designate as *voter registration agencies* all public agencies that provide public assistance, as well as all agencies that provide state-funded programs that primarily assist persons with disabilities. States must also designate additional voter registration entities but have discretion as to which entities to designate. Examples of voter registration agencies include county welfare offices, which accept applications and administer benefits for the Medi-Cal; Temporary Assistance for Needy Families; and Women, Infants and Children programs.

Computerized Statewide Voter Registration List Requirements Under the Federal Help America Vote Act of 2002

Some of the key requirements for the statewide voter registration list include the following:

- The computerized list shall serve as the official list of registered voters for the state.
- The appropriate state or local election official shall maintain the list regularly, such as by removing ineligible voters due to felony status or death.
- The state shall ensure that voter registration records are accurate by removing voters who *have not*:
 - Voted in two consecutive general elections for federal office *and*
 - Responded to official inquiries to confirm their address.
- The state shall verify voter registration information by:
 - Requiring driver's license numbers or the last four digits of voters' Social Security numbers.
 - Matching the information provided with applicable state and federal records.

Refer to Appendix C for more information on voter registration list requirements.

Source: Title 42 of the United States Code, Section 15483.

Once designated by the State as a voter registration agency, that agency must distribute a voter registration application and a voter preference card with each application for service or assistance. A *voter preference card* documents whether an individual seeking services accepts or declines the opportunity to register to vote. If a voter registration agency accepts a registration application, the voter registration agency must transmit that application to the appropriate state election official within 10 days. The Office provides voter registration agencies with training and guidance on how to comply with the NVRA.

The Office Plays a Central Role in Deciding Which Voting Systems May Be Used in California

The State's Elections Code requires that the secretary of state approve a voting system before it can be used in an election. Further, state law prohibits the secretary of state from approving a subset of voting systems called direct recording electronic (DRE) voting systems—computerized systems such as touch screen voting systems—unless the federal government has previously certified the DRE voting system for use. To comply with these requirements, the deputy secretary of state for HAVA activities indicated that the Office's policy has been to require that all voting systems,

both DRE and non-DRE, receive federal certification before they are reviewed for potential use in California.

The Office's Web site states that it conducts a thorough examination and review of a proposed voting system that includes, among other actions, security testing, a full source code review, accessibility testing, and a public hearing and comment period. The Web site describes this review as a supplemental process to the EAC's review and certification process. In order to submit a voting system for approval in California, the voting system vendor must complete the Office's application package.

The Legislature is currently considering Senate Bill 360 (SB 360) as part of the 2013–14 Regular Session. If enacted in its current form, SB 360 would provide the secretary of state with greater authority to approve voting systems by making the secretary of state's testing and approval process independent from the federal certification process. For example, the California Elections Code currently requires that all DRE voting systems first obtain federal qualification prior to being considered by the secretary of state for approval for use in California.

In contrast, under SB 360, the secretary of state could review and approve proposed DRE voting systems without first waiting for the results of federal testing. Further, SB 360 would require the secretary of state to adopt and publish voting system standards and regulations governing the use of voting systems. SB 360 states that until the secretary of state adopts the new voting system standards, the most recently adopted federal voluntary voting system guidelines shall be used as state standards.

Scope and Methodology

The Joint Legislative Audit Committee directed the California State Auditor to perform an audit of the Office’s efforts to fully implement HAVA and the NVRA. The audit objectives and the methods we used to address them are shown in Table 2.

Table 2
Audit Objectives and the Methods Used to Address Them

	AUDIT OBJECTIVE	METHOD
1	Review and evaluate the laws, rules, and regulations significant to the audit objectives.	We obtained and reviewed federal legislation, state election laws, and federal and state regulations. In particular, we reviewed the requirements of the federal Help America Vote Act of 2002 (HAVA) and the National Voter Registration Act of 1993 (NVRA). Further, we considered the California Elections Code regarding the secretary of state’s responsibilities to approve voting systems. Finally, we reviewed federal regulations governing how states should manage federal awards and state regulations establishing the State’s computerized voter registration list.
2	Determine if the Office of the Secretary of State (Office) implemented the California State Auditor’s (state auditor) recommendations from its 2004 audit report (audit report 2004-139) regarding HAVA, and if not, assess its progress or reasons for not implementing those recommendations.	We applied audit procedures to assess whether the Office had implemented our previous report’s recommendations. In some cases, these procedures involved selecting transactions to test while in other cases we reviewed the Office’s various HAVA planning documents and interviewed the Office’s senior staff. Our assessment of the implementation status of our prior report’s recommendations can be found in Appendix A.
3	Review the HAVA State Plan (state plan) and any updates and assess the Office’s progress in implementing the state plan. Determine to what extent the state plan has not been implemented, the causes for delay, and the steps the Office needs to take to fully comply with HAVA.	We obtained and reviewed the Office’s original 2003 state plan, titled <i>My Vote Counts: California’s Plan for Voting in the 21st Century</i> . We also reviewed the Office’s updates to this document in 2004 and again in 2010. We refer to these documents collectively as the HAVA state plan in our audit report. The purpose of the state plan was to define how the State would use a portion of the total funding it received under HAVA, specifically the nearly \$300 million in funding provided under HAVA Title III (Title III). Appendix C of our audit report provides our assessment of the State’s compliance with the requirements under Title III and the basis for our conclusions.
4	Determine how HAVA funds have been used subsequent to the audit report issued by the state auditor in 2004, including, but not limited to, the extent to which voting systems have been upgraded.	We obtained and reviewed the Office’s accounting records detailing its HAVA spending from fiscal years 2004–05 through 2011–12. We also interviewed the Office’s accounting staff to understand how the office accounted for and classified certain HAVA transactions. Beginning in fiscal year 2006–07, the Office changed accounting systems, and it indicated that its document retention policy for accounting records is four years. Upon our review of the hardcopy reports, we determined that these reports displayed potential accuracy issues that we could not audit as a result of the Office’s record retention policies. However, we do have reasonable assurance that the total expenditure information for fiscal years 2006–07 through 2011–12 is complete because we have reconciled these totals to those maintained by the California State Controller’s Office. As a result, the financial information we provide on HAVA spending, which is included in Appendix B, is limited to fiscal years 2006–07 through 2011–12.

continued on next page...

AUDIT OBJECTIVE	METHOD
5 Determine whether any funds intended for HAVA implementation have not been expended in a timely manner and, if funds have not been spent, determine the reasons.	We surveyed counties regarding their plans for future HAVA spending and provide this information in the report. In addition, we discuss the Office's recent experiences, based on interviews with its staff, with the VoteCal project and its desire to reserve HAVA funds for the full deployment of VoteCal.
6 Review and evaluate how the Office has implemented the NVRA, specifically the efforts to increase voter registration rates in California. Determine whether its actions meet the requirements of NVRA.	We interviewed Office officials responsible for implementing NVRA and reviewed the training materials and other key documents it had developed. In addition, we visited four locations providing public service, such as the California Department of Motor Vehicles and county public assistance offices in the greater Sacramento area. Posing as applicants for services, we observed whether the staff provided us with voter registration materials as the NVRA requires. We discuss the results of our observations in the body of the report.
7 Review and assess any other issues that are significant to the Office's implementation of HAVA and the NVRA.	We interviewed the Office's staff to assess the extent to which the State's current centralized voter registration list (CalVoter) complies with HAVA requirements, why the Office is pursuing the deployment of VoteCal, and why the Office has yet to certify full compliance with Title III.

Sources: California State Auditor's analysis of the Joint Legislative Audit Committee audit request number 2012-112, and information and documentation identified in the table column titled *Method*.

Audit Results

Some Counties Have Collectively Spent Millions on Voting Systems They Cannot Fully Use

Following the enactment of the federal Help America Vote Act of 2002 (HAVA), the federal government began providing California with HAVA funding to replace voting systems in June 2003, so that all systems used in a federal election would meet certain standards by January 2006.³ Since 2003 California's Office of the Secretary of State (Office) has awarded a total of \$252 million to counties for the replacement of their voting systems under HAVA's provisions. However, a significant portion of this federal funding has not been effectively spent to the benefit of the State's electorate. Specifically, some counties used their HAVA funds to purchase direct recording electronic (DRE) voting systems—computer-based voting systems that can have increased functionality, such as touch screens to assist voters with disabilities—that were subsequently banned or severely restricted in their use by the current and former secretaries of state. During our audit, we identified six counties that had collectively spent more than \$22 million in HAVA funds and more than \$29 million in state bond proceeds to purchase DRE voting systems they are unable to fully use.⁴

Under California's Elections Code, counties cannot purchase and use voting systems unless the secretary of state has first approved them for use. Further, the secretary of state may, according to state law, withdraw approval of voting systems after providing sufficient notice should he or she deem them unsuitable. Different secretaries of state have reached different conclusions regarding the suitability of certain DRE voting systems for counties' widespread use. Although we do not question the decisions by the current and former secretaries of state to approve or restrict the widespread use of such systems, one consequence of these decisions was that some counties spent HAVA funds to purchase DRE voting systems they cannot fully use. Specifically, the secretary of state currently limits counties using certain DRE voting systems to no more than one approved DRE voting system unit per precinct.⁵ According to the secretary of state, most California voters cast their ballots using paper-based voting systems.

During our audit, we expected to see regulations or other criteria defining the requirements and specifications for voting systems because, since 1994, state law has required the Office to develop these regulations in connection with the secretary of state's review and approval process for voting systems. Regulations serve as an important tool for ensuring consistency and for

Since 1994 state law has required the Office to develop regulations in connection with the secretary of state's review and approval process for voting systems; however, the Office has not yet developed such regulations.

³ HAVA Section 301 describes the voting system standards that states are to follow. These standards can be found at 42 USC 15481 and are described in more detail in Appendix C of this report.

⁴ In March 2002 California voters approved Proposition 41, referred to as the *Voting Modernization Bond Act of 2002*, which authorized the sale of \$200 million in general obligation bonds for voting system replacement.

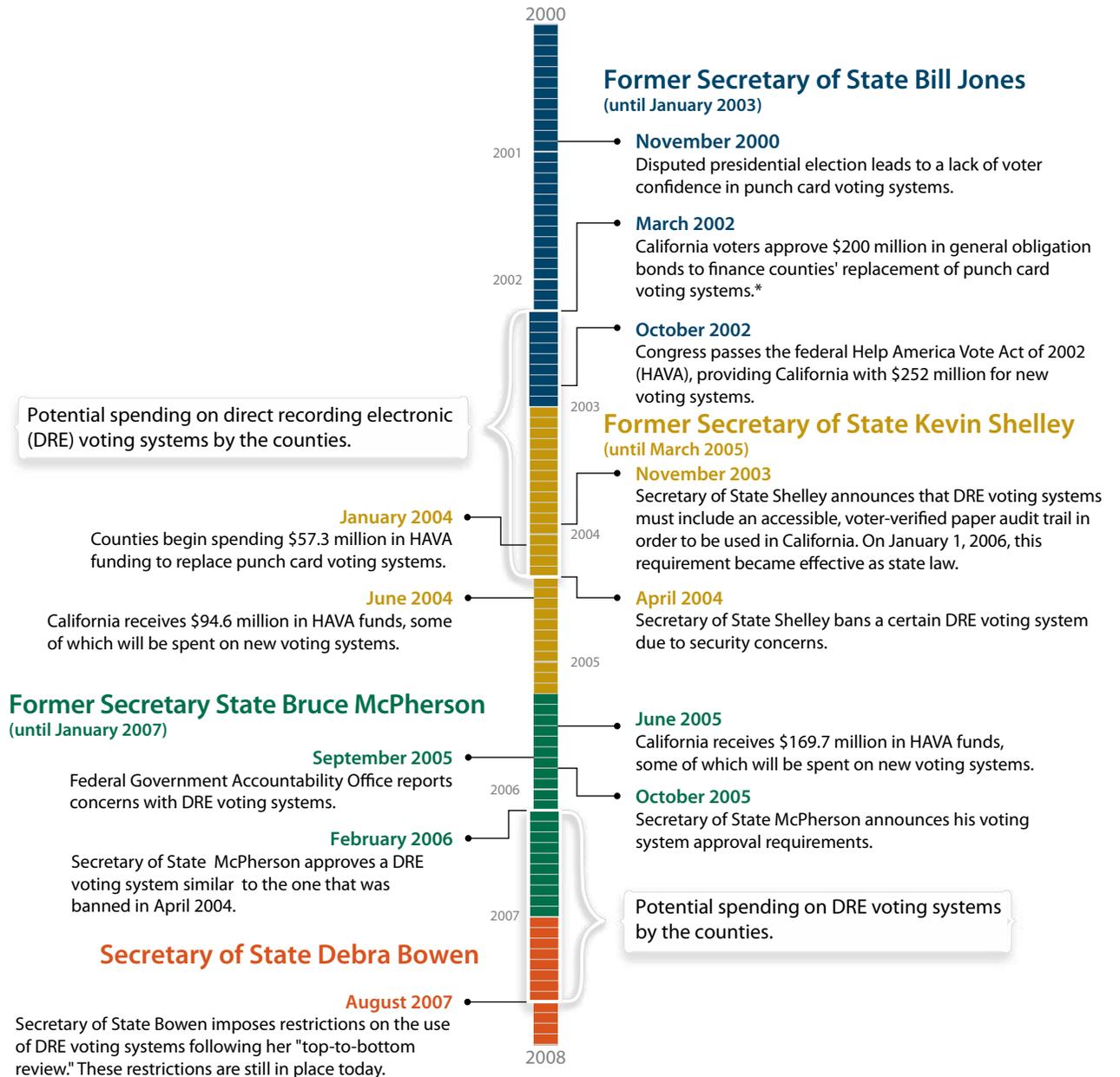
⁵ The secretary of state's limitation of DRE voting systems is applied on a vendor-by-vendor basis. This limitation applies to most, but not all, DRE vendors.

giving the regulated community—in this case those who sell and purchase voting systems—certainty. However, the Office has not yet developed such regulations and told us it hopes to have them drafted by October 2013 and in effect by January 2015. The Office does provide some information on its Web site, including an application that vendors are to complete when they submit a voting system for review. The application instructs vendors to include many pieces of documentation about the voting system, although neither the application nor the Web site describes the specific criteria that the voting system will be tested against. Specifically, the vendor must submit, among other items, a completed application, an index of technical system documentation, a copy of the source code for all software and firmware components of the voting system, and a check to cover the cost of system testing. According to the application, a full examination of a voting system costs approximately \$360,000. The timeline shown in Figure 1 and the following discussion provides a brief overview of the significant events and California's changing views on DRE voting systems.

Following the disputed presidential election in November 2000, California's voters approved Proposition 41 in March 2002, otherwise known as the Voting Modernization Bond Act of 2002 (Voting Modernization Act). The Voting Modernization Act authorized the State to sell \$200 million in general obligation bonds to assist counties in the purchase of modern voting systems that do not use punch card ballots. With the enactment of HAVA seven months later in October 2002, the State would eventually be awarded another \$252 million in funding to replace voting equipment. Similar to the Voting Modernization Act's prohibition of the use of state bond funds to purchase punch card voting systems, HAVA significantly de-emphasized the use of punch card voting systems, specifically earmarking more than \$57 million of the \$252 million for the replacement of these systems.

However, as California moved away from punch card voting systems and toward optical scan (fill-in-the-bubble) voting systems and DRE voting systems, the Office's concerns about the integrity and security of DRE voting systems began to materialize. In 2003, then Secretary of State Kevin Shelley learned that a particular DRE vendor had installed unapproved software in its DRE voting system. As a result of this discovery, in April 2004 Secretary Shelley revoked the approval of that vendor's system for use, a system that had been previously purchased and used in Kern, San Diego, San Joaquin, and Solano counties. In addition, the secretary required the remaining 10 counties using other DRE voting systems either to install a voter-verified paper audit trail before the November 2004 election or to meet 23 security measures before he would reapprove those systems. Ultimately, some counties and other parties challenged Secretary Shelley's April 2004 decision in federal court; however, in July 2004, the judge ruled in favor of the secretary's decisions. At approximately the same time, the Legislature was considering and would ultimately pass legislation requiring all DRE voting systems—regardless of when the system was purchased—to have an accessible, voter-verified paper audit trail by January 1, 2006.

Figure 1
Timeline of Significant Events Regarding the Use of Direct Recording Electronic Voting Systems in California



Sources: Various documents provided by the Office of the Secretary of State.

* In March 2002 voters passed Proposition 41, the Voting Modernization Bond Act.

In September 2005 the GAO promoted awareness of the potential problems associated with DRE voting systems that included weak system security controls, incorrect system configuration, and system failures during elections.

California's next secretary of state, Bruce McPherson, announced in October 2005 that he had created an Office of Voting System Technology Assessment within the Office and had established 10 conditions that voting system vendors had to satisfy before a new voting system could be considered for approval and use in California. Key items among the 10 conditions included requiring proof that the voting system had previously received federal certification from the Election Assistance Commission (EAC) and that the system would be subject to testing that simulated election-day conditions. In the press release announcing these changes, Secretary McPherson indicated that his requirements would be codified in state regulations; however, that did not occur. As stated earlier, the Office is only now drafting such regulations, and it has yet to initiate the formal rule-making process.

At about the same time, in September 2005, the federal Government Accountability Office (GAO) further promoted awareness of the potential problems associated with DRE voting systems, noting that election officials, computer security experts, citizen advocacy groups, and others had all raised significant concerns including, but not limited to, weak system security controls, incorrect system configuration, and system failures during elections. In its conclusion, the GAO noted that DRE voting systems hold promise for improving the efficiency and accuracy of the election process, but that the federal government could do more to define voting system standards and develop a process for federally certifying voting systems. The GAO also cautioned that there was a lack of consensus among election officials, computer security experts, and others on the pervasiveness of the problems noted in its report.

In February 2006 Secretary McPherson approved a DRE voting system similar to the one that had been banned in April 2004.⁶ In announcing his decision, he indicated that the vendor had received federal certification and that the system was being used in 19 states, including California. He also stated that the Office had computer scientists from the University of California at Berkeley conduct an additional security review of the programming code contained within certain components of the DRE voting system. The results of this review found that while some problems did exist, they were manageable, and any risks could be mitigated by counties following appropriate use procedures.

After taking office in January 2007, current Secretary of State Debra Bowen conducted what she termed a "top-to-bottom review" of the major voting systems used in California, including both DRE and optical-scan voting systems. As part of her review, she solicited input from voters, vendors, county registrars, and interested organizations. She also asked computer experts from the University of

⁶ Secretary of State McPherson subsequently approved additional voting systems in March and April 2006.

California to assess the security of all the voting systems they tested. The results of this review highlighted security concerns involving certain voting systems. As a result, in August 2007 Secretary Bowen restricted the use of some DRE voting systems to no more than one unit per precinct, so as to accommodate voters with disabilities, while approving other voting systems subject to certain conditions, including reinstalling the software in all voting system components and banning modem or wireless connections. These restrictions are still in place today.

The history of California's approval of DRE voting systems points to three key facts: different secretaries of state have reached different conclusions regarding the suitability of counties using certain DRE voting systems; regulations that would otherwise help to publicly define and solidify the secretary of state's approval process do not exist; and the changing expectations for DRE voting systems, in terms of which systems are allowed for use and what functionality such systems must possess, have led to wasteful spending of both federal and state money. During our audit, we identified two distinct time periods when counties were able to spend HAVA funds on DRE voting systems that were once approved, but whose use is severely restricted today. In particular, counties could use HAVA funds to purchase DRE voting systems for widespread use between January 2004—when they first began spending HAVA funds to replace their punch card voting systems—and the April 2004 decision to initially ban one DRE voting system and place additional requirements on others. The second time period runs from Secretary McPherson's decision to approve certain DRE voting systems beginning in February 2006 to Secretary Bowen's restriction of some DRE voting systems in August 2007.

We attempted to examine certain payments the Office made to counties during these two periods, in order to partially quantify county spending on DRE voting systems. However, the Office's accounting records were not available, given its four-year retention policy for such records, which is inconsistent with federal requirements.⁷ As a result, we made inquiries to certain counties about their spending on voting system replacement. Despite speaking with only a few counties, we determined that the federal and state financial resources spent on DRE voting systems, most of which cannot now benefit most voters, appear to be significant. As shown in Table 3 on the following page, we identified six counties that had collectively spent more than \$22 million in HAVA funding and more than \$29 million in Voting Modernization Act funding on DRE voting systems they can no longer fully use.

We made inquiries to certain counties about their spending on voting system replacement and determined that the federal and state financial resources spent on DRE voting systems not fully used appear to be significant.

⁷ Federal regulations governing how states are to manage HAVA funds require that the Office maintain complete financial records for three years following its single or last federal financial report. The Office has yet to submit its last financial report because it has yet to fully spend the HAVA funds.

Table 3
Partial Quantification of County Spending on Direct Recording Electronic Voting System Units Not Being Fully Used

COUNTY	FUNDS USED ON DIRECT RECORDING ELECTRONIC (DRE) VOTING SYSTEMS			DRE VOTING SYSTEMS PURCHASED (NUMBER OF UNITS NOT BEING FULLY USED)
	FEDERAL HELP AMERICA VOTE ACT OF 2002	VOTING MODERNIZATION BOND ACT OF 2002	TOTALS	
Alameda	\$0	\$8,779,360.86	\$8,779,360.86	Diebold AccuVote TS voting system (2,781 units)
Kings	581,008.11	581,008.11	1,162,016.22	Sequoia AVC Edge II voting system (200 units)
Los Angeles	203,451.32	610,353.93	1,284,104.81	Diebold AccuVote TS voting system (171 units)*
	470,299.56	0		Diebold AccuVote TSx voting system (171 units)
Riverside	0	7,509,478.39	13,495,989.10	Sequoia AVC Edge I voting system (4,250 units)*
	5,986,510.71	0		Sequoia AVC Edge II voting system (2,950 units)
San Diego	12,519,508.58	3,072,545.42	15,592,054.00	Diebold AccuVote TSx touch screen voting system (8,200 units)
Santa Clara	2,318,400.00	8,706,600.00	11,025,000.00	Sequoia AVC Edge II voting system (3,500 units)
Totals	\$22,079,178.28	\$29,259,346.71	\$51,338,524.99	

Source: Unaudited information provided by the counties.

Notes: The amounts shown in the table do not represent a total quantification of the amounts spent on DRE voting systems. Instead, these amounts are the result of our inquiries to certain counties regarding their spending on voting system replacement.

* The county stated that it traded these units in toward a purchase of a different voting system.

Although regulations defining the State's expectations for voting system standards are needed, it is unclear whether such regulations—had they existed when counties were purchasing these DRE voting systems during the two time periods we noted—would have fully prevented the inefficient spending shown in Table 3. Any such regulations would likely have needed to adapt to the State's changing expectations for these voting systems. For example, the Legislature required that all DRE voting systems—regardless of when they were purchased—include an accessible, voter-verified paper audit trail by 2006. This requirement went into effect after some counties had already started spending HAVA funds on voting system replacement. Nevertheless, the Office's current efforts to develop regulations defining the voting system approval process are a positive step. It is too early to tell whether these regulations will provide the clarity and specificity needed to ensure that the voting public—as well as the counties and those vendors that invest their own funds in developing voting systems—can have faith in and understand the State's expectations for DRE voting systems. The Legislature is currently considering Senate Bill 360 (SB 360) as part of the 2013–14 Regular Session. If enacted in its current form, the Legislature would require the secretary of state to adopt and publish voting system standards and regulations governing the use of voting systems. SB 360 would further require that, until the secretary of state adopts such standards, the most recently adopted federal voluntary voting system guidelines shall be used as the state standards. As a result, it appears that the Legislature has

already recognized the need for the secretary of state to provide greater specificity and clarity regarding the State's voting system approval process.

Some Counties Cited the Need for New Voting Systems, Additional Funding, and Consistency From the Secretary of State Regarding Decisions on Voting System Approvals

In December 2005 the Office began awarding \$195 million in HAVA grants to counties so that they could replace their voting systems to meet HAVA's voting system standards. During our audit, we surveyed all 58 county registrars of voters to get their perspectives on whether they still have grant funding available and, if so, what factors have prevented them from fully using this funding. Of the 58 counties, 31 indicated that they had remaining HAVA funding available, while another 26 reported that they had fully spent their grant funds.⁸ For the 31 that had remaining funds, many reported that they are waiting for vendors to develop new voting systems and/or are waiting for the secretary of state to approve additional voting systems. There also appears to be uncertainty among counties as to when they will purchase new voting systems, since 20 counties could not provide a time horizon for when they expect to replace the voting systems they use today. Nevertheless, a significant number of counties expressed concerns about their aging voting systems and how they would pay for their replacement. Several other counties raised concerns about aspects of the secretary of state's voting system approval process, and some counties commented on the changing guidance regarding which voting systems are approved and which ones are not. Understandably, counties with remaining HAVA funds may not want to repeat the experiences of other counties that spent HAVA funds on voting systems that were subsequently disapproved or whose use was greatly restricted by the current or former secretaries of state.

As shown in Table 4 on the following page, 25 counties indicated that they were waiting for the secretary of state to approve additional voting systems. We asked the deputy secretary of state for HAVA activities (deputy secretary for HAVA) whether the Office currently had any voting systems under review and, if so, how long such systems had been under consideration and whether there was any backlog. The deputy secretary for HAVA told us that the Office currently has no new voting systems under review for potential approval, explaining that vendors must initiate the submission of voting systems to the secretary of state for such review.

A significant number of counties expressed concerns about their aging voting systems and how they would pay for their replacement.

⁸ One county reported not knowing whether it had grant funds available.

Table 4
County Registrar of Voters' Responses to the State Auditor's Survey Regarding Voting System Replacement Under the Federal Help America Vote Act of 2002

SURVEY QUESTION	SURVEY RESPONSE	NUMBER OF COUNTIES
Question 2—What is your county's available remaining balance (as of January 1, 2013) for voting system upgrades under federal Help America Vote Act of 2002 (HAVA) Section 301?*	\$0.00	26
	\$0.01–\$100,000	3
	\$100,001–\$500,000	13
	\$500,001–\$1,000,000	4
	\$1,000,001–\$5,000,000	9
	\$5,000,001–\$28,000,000	2
Question 3—If your county has HAVA funding available for voting system upgrades, why has your county not spent the remaining funds?†	The county is waiting for the secretary of state to approve additional voting systems.	25
	The county is waiting for vendors to develop new voting systems.	21
	Other‡	10
	The county is happy with its current voting systems.	6
	The county is concerned with the reliability and security of voting systems currently approved.	2
Question 4—When does your county plan to spend its remaining HAVA funds for voting system replacement?§	Within one year	0
	Within one to two years	7
	Within three to five years	5
	Over five years	1
	Unknown	20
Question 8—Please provide any other perspectives you believe are important regarding the issues discussed in this survey.¶	County is currently using aging voting systems.	11
	County is concerned about the voting system approval process.	11
	County needs additional funding to upgrade voting systems.	9
	County received unclear/changing guidance about voting system approvals and restrictions.	5
	County is concerned about the lack of flexibility in spending HAVA funds.	4

Source: California State Auditor's survey of county registrars of voters regarding the use of HAVA funds for voting system replacement.

Notes: During our audit, we surveyed all 58 counties regarding their use of grant funding provided by the Office of the Secretary of State (Office) under HAVA sections 251 and 301. The Office had awarded \$195 million to counties to upgrade their voting systems to meet the minimum standards established in HAVA.

All 58 of the State's counties responded. For certain questions, a county could have provided more than one response. In other cases, counties left a survey question unanswered. In the table above, we have summarized the counties' responses to certain key questions posed in the survey.

* One county stated its balance as "unknown", and its response was excluded from Question 2.

† Some counties cited more than one reason.

‡ We considered the "other" responses provided to Question 3 when evaluating county responses to Question 8.

§ One county chose two answers in its response and another county stated "unknown" to this question and question 2.

¶ Themes derived from free-form comments made by counties in questions 3, 7, and 8. Some counties commented on multiple topics.

When responding to our survey, 11 counties indicated that they are using aging voting systems, and nine indicated that they need additional funding to upgrade their current voting systems. Four of these nine counties indicated that they had already fully spent their HAVA grant awards for voting system replacement. For example, San Benito County stated that its current voting system has

exceeded its life expectancy and that many of its units are no longer operational. San Benito further stated that its revenues cannot cover a new voting system at this time, and thus it needs additional federal grant funding to assist in voting system replacement. After reviewing San Benito's response, we noted that the Office had awarded the county \$303,222 in HAVA funds to replace its voting systems and the county had fully spent this amount in fiscal year 2006–07.

Finally, 11 counties responding to the survey expressed concerns about the Office's voting system approval process, while five made comments that highlighted the changing approval decisions the Office issued on certain voting systems. For example, Mariposa County stated that it had purchased a DRE voting system for use countywide but was able to use it for only three elections before the Office restricted its use. The county now has a number of units it spent HAVA funds on but can no longer use and, as a result, has returned to using paper ballots. After reviewing Mariposa's response, we noted that the Office had awarded Mariposa \$145,591 to replace its voting system and that this county had also spent its entire allocation in fiscal year 2006–07.

If the Office Takes Certain Steps, the Legislature Would Have Increased Flexibility in How It Appropriates Remaining HAVA Funds

Once the chief election officer of a state declares to the EAC that the state has complied with all HAVA Title III (Title III) requirements, any remaining HAVA funds can generally be spent on other HAVA activities to improve the administration of elections. Appendix C provides the basis for our conclusion that California appears to have satisfied the Title III requirements. Furthermore, when we asked the Office if it believes it has complied with those requirements, it stated that it has done so. Increased flexibility when appropriating HAVA funds would give the Legislature greater discretion over how the Office spends the remaining HAVA funds. For example, the Legislature could authorize additional HAVA grants for counties that might use the funds to replace their voting systems or to train poll workers, or the Legislature could decide that it is best to reserve HAVA funds for the State's investment in VoteCal, the Office's planned statewide computerized voter registration list. Regardless of the path it chooses, it appears that the Legislature would have greater control over how HAVA funds are spent. The Office has previously explained to some counties that it cannot provide this flexibility until VoteCal is fully deployed. Although the terms of an agreement between the Office and the United States Department of Justice (Justice) call for deployment of VoteCal, we do not believe VoteCal is necessary to meet the requirements of HAVA. Finally, we note

Once the chief election officer of a state declares to the EAC that the state has complied with all Title III requirements, any remaining HAVA funds can be spent to improve the administration of elections.

The secretary of state's initial attempt to implement VoteCal was unsuccessful, resulting in more than \$4.6 million in HAVA funds being spent on contractors, with no significant benefit to California's voters.

that the secretary of state's initial attempt to implement VoteCal was unsuccessful for a variety of reasons, resulting in more than \$4.6 million in HAVA funds being spent on contractors, with no significant benefit to California's voters.

The Secretary of State Does Not Need to Wait for the Deployment of VoteCal to Declare the State's Compliance With HAVA's Requirements

The Office appears to have satisfied HAVA's requirement for a statewide computerized voter registration list through its current database, CalVoter, but it has yet to declare its compliance with Title III requirements to the EAC. When describing the need for VoteCal, the Office does not appear to have a consistent position on whether its current CalVoter system complies with HAVA. For example, in its fiscal year 2012–13 VoteCal budget change proposal report to the California Department of Finance (Finance), the Office explained that the new VoteCal system will allow California to be compliant with the computerized voter registration list requirements of HAVA, suggesting that its current CalVoter system is not HAVA compliant; however, the Office subsequently explained that its regulations defining how counties perform database maintenance makes the current CalVoter system HAVA-compliant. The Office also frequently points to an agreement it has with Justice as an explanation for pursuing VoteCal. According to the Office, that agreement is a legally binding document and by failing to honor it, the State could face a federal lawsuit. Nonetheless, because the Office believes that the current CalVoter system fully complies with HAVA's requirement for a statewide computerized voter registration list, as shown in Table 5, it should attempt to seek a release from, or modification of, its agreement with Justice.

In January 2005 the Office wrote to Justice asking for an opinion on California's proposed plan to comply with HAVA's computerized registration list requirements on an interim basis. Following the receipt of this letter, Justice expressed to the Office why its proposed plan did not comply with HAVA's requirements. Nearly a year's worth of discussions followed, culminating in an agreement between the two agencies in November 2005. The agreement required short-term fixes for the Office's voter registration database, CalVoter, until the Office could deploy the new long-term database, VoteCal. In September 2006 the Office informed Justice that it had successfully upgraded CalVoter for the November 2006 general election.

Table 5
Federal Help America Vote Act of 2002 Requirements for Statewide Voter Registration List and CalVoter Functionality

FEDERAL HELP AMERICA VOTE ACT OF 2002 (HAVA) SECTION 303—COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS		CALVOTER FUNCTIONALITY (STATUS)
General requirements	Computerized system is the state’s official voter registration list.	Implemented
	Computerized system contains the name and registration information for every legally registered voter.	Implemented
	Each voter has a unique identification number.	Implemented
	Computerized system will coordinate with other state databases.	Implemented
	Local elections officials will have immediate electronic access to the computerized list.	Implemented
	Secretary of state will assist local officials with their efforts to update the computerized list.	Implemented
Computerized list maintenance	The state or local election official will remove voters who are felons, have died, or have not verified their address and not voted in two consecutive federal general elections.	Implemented
Technological security	The state or local election official shall provide adequate technological security to prevent unauthorized access to the list.	Implemented
Minimum standards for accuracy of state voter registration records	Reasonable efforts will be made to remove voters who have not confirmed their address and have not voted in two consecutive federal general elections.	Implemented
Verification of voter registration information	Applicants registering to vote must provide a driver’s license number or the last four digits of their Social Security number. Otherwise, the state must assign a unique identification number to the applicant.	Implemented
	The secretary of state shall utilize the databases of the federal government and the state’s motor vehicle agency to match and verify applicant information.	Implemented
Additional requirements for those who register by mail	Those who register by mail and have not previously voted in a federal election in the state or particular jurisdiction must present acceptable identification.	Implemented

Sources: HAVA and the California State Auditor’s evaluation of documentation provided by the Office of the Secretary of State (Office).

Notes: For an explanation regarding how we reached our conclusions on status, refer to Table C in Appendix C.

Our conclusions were based solely on our review of state law, regulations, and information provided by the Office, such as documentation regarding CalVoter. Successful implementation of HAVA depends, in part, on the quality of the data local election officials upload into CalVoter. We did not review the accuracy or completeness of the voter registration data contained within CalVoter.

When we asked the Office to explain how CalVoter does not comply with HAVA, the deputy secretary for HAVA acknowledged that CalVoter, in combination with certain regulations, meets the basic requirements of HAVA for a statewide computerized voter registration list maintained and administered at the state level. Providing us with clarification for why VoteCal is needed, the deputy secretary for HAVA stated that the CalVoter system was a temporary fix to meet the basic requirements of HAVA and that the Office has modified CalVoter beyond its original purpose on legacy equipment; therefore, CalVoter is not a sustainable solution. The deputy secretary for HAVA also stated that VoteCal will provide additional benefits to the counties and to California voters, such as polling place lookup, ballot tracking, and enhanced online voter registration. Although these may be valid reasons for continuing to pursue the full deployment of VoteCal, the lack of a fully deployed VoteCal system should not prevent the Office from declaring that the State has complied with Title III requirements and seeking a release from its agreement with Justice, which binds the Office to

deploying VoteCal. Doing so would provide the Legislature with greater flexibility regarding where future HAVA spending should be directed. Appendix C provides the basis for our conclusion that the Office has already satisfied Title III requirements. Furthermore, the Office represented to us during the audit that—notwithstanding its agreement with Justice to deploy VoteCal—it has already met Title III requirements. Although Justice has the power to enforce HAVA’s provisions, the HAVA legislation itself provides the states—not the federal government—with the flexibility to determine “the methods of implementation” to comply with Title III. Given the Office’s own reasonable opinion that it has fully satisfied these requirements, and given the needs counties have expressed for greater flexibility for HAVA spending, renegotiating the agreement with Justice seems appropriate. During the audit, we made numerous attempts to discuss the agreement with Justice in order to obtain the federal government’s perspective for requiring VoteCal, but we did not receive a response to those inquiries.

The Office’s reluctance to declare its compliance with Title III appears to be the result of both its agreement with Justice and its desire to reserve HAVA funds for the full deployment of VoteCal. When the Office and some county registrars were developing the 2010 update to the HAVA state plan, certain counties challenged the Office as to why the plan did not discuss how the Office intended to spend HAVA funds once the Title III requirements are satisfied. While some counties are eager for increased funding and more flexibility, the Office and the Legislature are understandably sensitive to the State’s General Fund exposure to paying for VoteCal’s costs. The Budget Act of 2012 includes provisional language that requires the Office to report to the Legislature by January 15 each year, until VoteCal is fully implemented, with information on VoteCal’s contractor costs, the purposes for those costs, and the expected General Fund exposure for complying with HAVA, including the expected costs of administration.

We believe the Legislature should be able to decide how best to use the remaining HAVA funds.

Ultimately, we believe the Legislature should be able to decide how best to use the remaining HAVA funds, whether it be to reserve such funds to protect against future General Fund exposure on the VoteCal project or to provide counties with additional funding and greater flexibility in spending their HAVA grant funds, or both. A declaration by the Office of compliance with Title III requirements would provide the Legislature with the opportunity to fully debate and ultimately decide how best to use the remaining HAVA funds. As of June 30, 2012, the unappropriated balance of remaining HAVA funds—which represents available HAVA funding that has not been authorized for spending by the Legislature—was roughly \$131 million. This amount is over \$30 million more than the \$98.2 million reported in the Office’s November 2012 budget

for the VoteCal project. In addition, a significant portion of this \$98.2 million budget represents funds that were already spent on VoteCal between fiscal years 2006–07 and 2011–12.

The First Attempt to Develop VoteCal Failed, Costing Millions, and the Lack of Competition on the Second Attempt Raises Concerns That It Will Not Be Any More Successful

During the initial attempt to develop VoteCal, the Office determined that the main contractor ultimately failed to provide key deliverables and did not provide a performance bond to protect the State against poor contractor performance. As a result, the first attempt to develop VoteCal failed, costing the State at least \$4.6 million. In our opinion, most of the HAVA funds spent on the initial VoteCal attempt have resulted in no significant long-term benefit to the State's voters or toward achieving the ultimate goal of completing VoteCal. Although we can understand the Office's desire to increase the financial protections it provides to the State, given its past experience with the VoteCal project, the financial conditions the Office has imposed as part of the new vendor selection process may have played some role in limiting bidder competition, since only one vendor submitted a final proposal for the current attempt to develop VoteCal.

In September 2009 the Office entered into a contract with a private firm called Catalyst Consulting Group, Inc. (Catalyst) to develop and deploy a statewide computerized voter registration list, referred to as the VoteCal project. The contract described a set of deliverables due at different phases of the project. According to the Office, Catalyst failed to meet a number of key contract deliverables during the design phase of the VoteCal system, including submitting design documents that were expected to define and detail the VoteCal system Catalyst was going to build. As a result, in early May 2010, the Office provided Catalyst with a notice of default and cure letter. A *cure letter* is a notice issued to a contractor when its actions constitute significant deviations from the requirements of the contract and gives the contractor a deadline by which to regain compliance with the contract's terms. The Office gave Catalyst 30 days to resolve the issues noted in the cure letter. However, Catalyst—which in response claimed the Office was in breach of the contract's terms—signaled a willingness to discuss a settlement agreement and thus terminate its involvement with the VoteCal project.

The Office's cure letter also stated that Catalyst did not submit a performance bond as agreed to in the contract, thus adding another reason for the Office to state that Catalyst was in material breach of the agreement. A *performance bond* is a form of collateral the

During the initial attempt to develop VoteCal, the Office determined that the main contractor failed to provide key deliverables and did not provide a performance bond to protect the State against poor contractor performance.

contractor provides to assure that funds are available to reimburse the State for damages if the contractor abandons or fails to complete the work as the contract requires.

The VoteCal contract required Catalyst to submit a performance bond within 21 calendar days after the award of the contract, unless the bond was previously submitted with the contractor's proposal. Catalyst provided the State with a letter from an insurance company—dated in January 2009, eight months before Catalyst ultimately executed the VoteCal contract in September 2009—indicating that Catalyst had “secured a bonding relationship” and that the insurance company “currently provides Catalyst with a single project limit of \$20 million and a total bonding capacity of \$10 million.” At first glance, the insurance company's letter appears to suggest that Catalyst had obtained a performance bond, but upon further reading of this letter, it is clear that no such bond existed. The insurance company's letter went on to state that it was aware that Catalyst would be required to submit a performance bond for a value not to exceed \$10 million if it was awarded the VoteCal project. However, the insurance company advised the State that “the decision to issue performance and payment bonds is a matter between the insurance company and Catalyst and will be subject to [the insurance company's] underwriting requirements.” The insurance company ended its letter by saying that it assumed “no liability to third parties or to you if for any reasons they [Catalyst] do not execute said bonds.”

To add further confusion to the issue, the VoteCal contract did not designate to whom Catalyst should ultimately submit the performance bond, such as a contact person at the California Department of General Services (General Services) or within the Office.⁹ Nevertheless, after General Services and the Office learned that Catalyst had not submitted the required performance bond, General Services sent a letter to Catalyst on April 26, 2010—nearly eight months after Catalyst had executed the VoteCal contract with the Office—and required submission of the bond within four days. In response to General Services, Catalyst explained that it had tried to obtain the required performance bond, but that the estimated \$400,000 in costs and 100 percent collateral requirements for the bond were too high for the firm to absorb.

We asked both the Office and General Services why each agency had not discovered earlier that Catalyst had not submitted the required bond. According to the acting deputy secretary of state for operations (acting deputy secretary for operations), the contract's requirements do not make it clear to whom the performance bond should have been submitted, and this ambiguity contributed to a shared contract

⁹ General Services serves as the business manager for the State and provides procurement services to state agencies.

management misstep for both General Services and the Office. When we spoke with General Services' chief of procurement (procurement chief), he also indicated that the ambiguity in the contract defining to whom Catalyst should submit the performance bond caused uncertainty, resulting in neither General Services nor the Office following up with Catalyst to obtain the bond.

In May 2010 the Office and Catalyst agreed to terminate the contract with a settlement agreement that paid Catalyst \$610,000. As a result, the Office would retain ownership of certain hardware and software licenses that Catalyst had previously purchased for VoteCal. The settlement agreement also reimbursed Catalyst for certain work that the Office would accept "as is." The amount the Office paid to settle was in addition to the nearly \$1.3 million it had already paid Catalyst for previously completed deliverables in earlier phases of the VoteCal project.

In our opinion, most of the HAVA funds spent on the initial VoteCal attempt have resulted in no long-term benefit to the State's voters, nor have those funds helped achieve the ultimate goal of completing VoteCal. Although the acting deputy secretary for operations stated that the new vendor that replaced Catalyst plans to use the hardware and software previously purchased, it nevertheless appears that a significant portion of the \$4.6 million paid to contractors yielded minimal tangible benefits, since most costs were for other contractors and consultants who provided oversight and support. Figure 2 on the following page shows these different contractors—in addition to Catalyst—and the amounts paid to each.

After terminating its contract with Catalyst, the Office took steps to strengthen the financial requirements for Catalyst's successor. Specifically, the Office required the next vendor to have at least \$50 million in average annual gross revenue for the last three fiscal years. Further, the contract required the next vendor to have the financial strength to agree to forgo payment for up to six months on the project.

Although we understand the Office's desire to increase the financial protections it provides to the State, given its experience with Catalyst on the VoteCal project, the financial conditions the Office has imposed as part of the new vendor selection process may have limited the bidder competition. One potential bidder complained to General Services regarding those conditions. Hewlett Packard, which claimed to have experience implementing statewide voter registration databases in 13 other states, had various concerns with the Office's VoteCal requirements, including the Office's payment terms and other financial requirements. When selecting Catalyst's successor, the Office screened interested bidders in an attempt to prequalify up to four firms that achieved the highest scores on select criteria, which included financial and insurance requirements

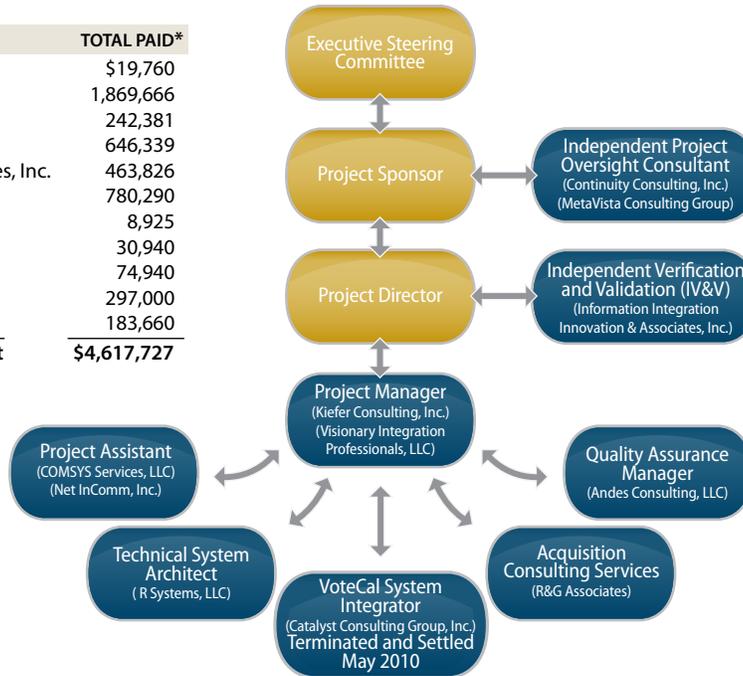
Most of the HAVA funds spent on the initial VoteCal attempt—at least \$4.6 million—have resulted in no long-term benefit to the State's voters or helped achieve the goal of completing VoteCal.

Figure 2
VoteCal Project Management Structure and Consultant Costs (Initial Implementation Attempt)

CONTRACTOR	TOTAL PAID*
Andes Consulting, LLC	\$19,760
Catalyst Consulting Group, Inc.	1,869,666
COMSYS Services, LLC	242,381
Continuity Consulting, Inc.	646,339
Information Integration Innovation & Associates, Inc.	463,826
Kiefer Consulting, Inc.	780,290
MetaVista Consulting Group	8,925
Net InComm, Inc.	30,940
R Systems, LLC	74,940
R&G Associates	297,000
Visionary Integration Professionals, LLC	183,660
Total Federal Funds Spent on Initial Attempt	\$4,617,727

LEGEND

- Secretary of State Staff
- Contractor



Sources: Office of the Secretary of State (Office) planning documents, consultant contracts, and accounting records.

* Amounts paid are based on the Office's California State Accounting and Reporting System accounting data through May 2010, when the Office terminated its agreement with Catalyst Consulting Group, Inc.

that were evaluated on a pass-or-fail basis. The Office received prequalification packages from two vendors and, in November 2011, qualified only CGI Technologies and Solutions, Inc. (CGI). We note that the Office's determination that there was only one qualified bidder—CGI—for the current VoteCal attempt parallels its experience with Catalyst, which was the only bidder that met the Office's requirements on the first VoteCal attempt.

Moreover, in May 2011, roughly six months before the Office prequalified CGI to develop a VoteCal proposal, the California Technology Agency (Technology Agency) sent a letter to General Services expressing concern that several aspects of the Office's request for proposals (RFP) for the VoteCal project had the potential to limit bidder interest to an unacceptable extent.¹⁰ Specifically, the Technology Agency cited the following concerns: the Office's financial requirements, the expectation that the vendor would commit six key project staff from the beginning of the procurement process, and the Office's intent to own all of the project's source code.

¹⁰ The Technology Agency (now the California Department of Technology as of July 1, 2013) is responsible for the approval and oversight of state information technology projects.

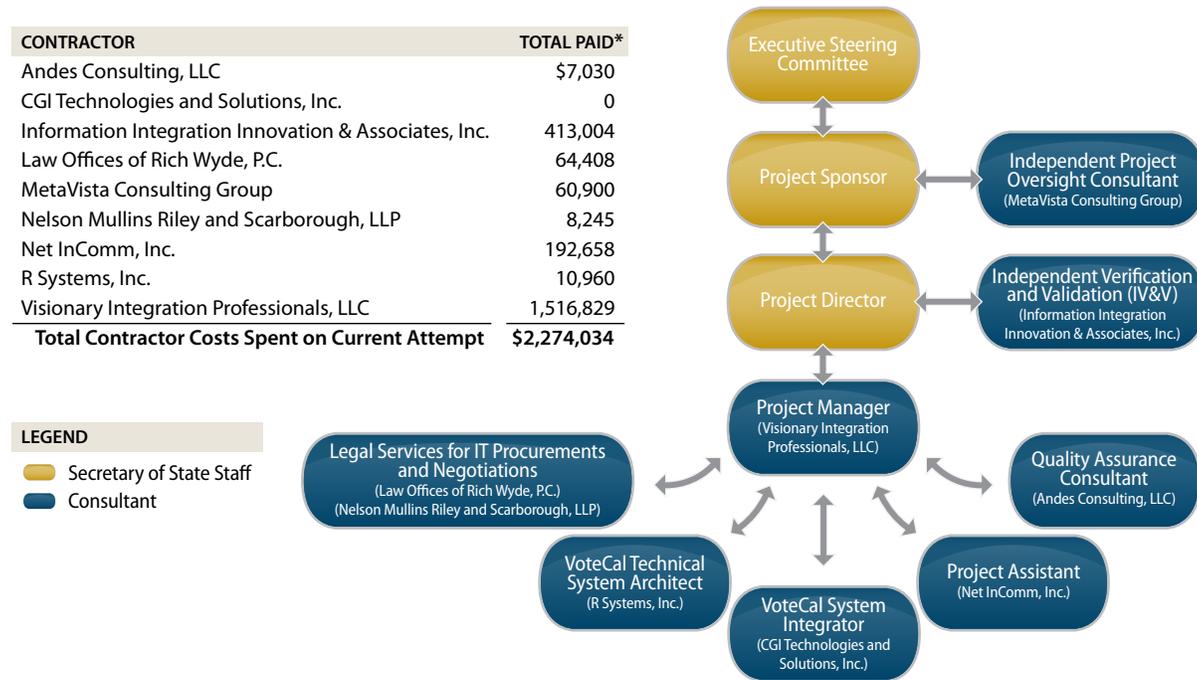
The Technology Agency stressed that competition is paramount to achieving effective information technology solutions and recommended that further efforts to revise and clarify the VoteCal RFP remain on hold so that a request for information process could be started to obtain information from the vendor community about their concerns and to determine appropriate solutions. However, General Services approved the Office's VoteCal contract with CGI in March 2013. CGI was the only vendor to pass the Office's prequalification stage in November 2011, and thus it became the only bidder that could continue working with the Office on the VoteCal procurement.

The Technology Agency's May 2011 letter to General Services was written by the acting secretary for the Technology Agency and was addressed to General Services' procurement chief. We asked the procurement chief why he decided not to act on the Technology Agency's recommendations. The procurement chief indicated that General Services' practice is to allow state departments and agencies to establish their own business needs and then let the market dictate how many bidders respond. In the case of the VoteCal procurement with CGI, the procurement chief explained that the Office fully met the State's procurement rules by advertising the VoteCal project and inviting bidders to respond. He also clarified that the fact that only one bidder—CGI—passed the prequalification stage is a result of the Office's decision to impose the requirements it did at the outset of the procurement. As with any procurement, the procurement chief explained, state departments and agencies must accept the risks that result from the business requirements they impose on their procurement activities. We also spoke with the deputy director of the Technology Agency's Office of Telecommunications Procurement to get his perspective on the VoteCal procurement. He indicated that because the concerns expressed in the May 2011 letter were not about information technology issues, the Technology Agency felt it did not have the power to put the procurement on hold.

Despite the Technology Agency's concerns, the Office has moved forward with the VoteCal project. According to its VoteCal project report to the Technology Agency dated November 2012, the Office expects to complete the deployment of VoteCal by June 30, 2016, with a budget for the project of \$98.2 million in one-time and continuing costs for activity between fiscal years 2006–07 and 2016–17. Figure 3 on the following page shows the contractors that were paid for work on the VoteCal project from June 2010 through June 2012. The amount the Office expects to pay its key contractor, CGI, is \$38.7 million, or slightly more than double what it was planning to pay its first contractor, Catalyst, whose contract was roughly \$18.2 million. When we asked the Office's current VoteCal project director about the cost increase, the project director explained that CGI's past experience, in addition to the refined and clarified VoteCal requirements, increases the State's confidence that the bid amount proposed is an accurate estimate.

The Office expects to complete the deployment of VoteCal by June 30, 2016, with a budget for the project of \$98.2 million for activity between fiscal years 2006–07 and 2016–17.

Figure 3
VoteCal Project Management Structure and Projected Consultant Costs (Current Implementation Attempt)



Sources: Office of the Secretary of State’s (Office) planning documents, consultant contracts, and accounting records.

* The amounts paid are VoteCal expenditures that the Office recorded in June 2010 (after the termination of its agreement with Catalyst Consulting Group, Inc.) through June 2012.

The Office Can Enhance the Quality of Its Financial Reporting to the Legislature and Can Improve Its Accounting for HAVA Activity

As part of the annual budget process, the Budget Act requires the Office to provide Finance with a HAVA spending plan. The Office’s submission of the HAVA spending plan, and the plan’s approval by Finance and subsequent review by the Legislature, is a necessary precondition before the Office may spend any HAVA funds from its appropriation. However, our review of the Office’s HAVA spending plan from December 2011, which was used to prepare the governor’s fiscal year 2012–13 budget, found that the spending plan contained historical HAVA spending data that did not agree with the Office’s accounting records. As shown in Table 6, the total spending shown in the HAVA spending plan by year, as well as HAVA spending within certain activities, contained significant variances—sometimes amounting to millions of dollars—from the accounting information contained within the California State Accounting and Reporting System, which is the Office’s official computerized accounting system. Although we did not find instances in which the Office exceeded the spending authority provided by the Legislature, the Office’s practice

of providing the Legislature with financial information that is not based on its accounting records unnecessarily diminishes the value of the HAVA spending plan, which serves as a key transparency and accountability tool for the Legislature.

Table 6
Comparison of Select Spending Data Provided to the Legislature Versus Spending Data Contained in the Office of the Secretary of State’s Accounting System for the Federal Help America Vote Act of 2002 Fiscal Years 2006–07 Through 2010–11

		FISCAL YEAR					TOTALS
		2006–07*	2007–08	2008–09	2009–10	2010–11	
Federal Help America Vote Act of 2002 (HAVA) Title III grants for voting system replacement	Expenditures per HAVA spending plan	\$5,680,011	\$87,667,059	\$41,897	\$0	\$(65,867,220)	\$27,521,747
	Expenditures per California State Accounting and Reporting System (CALSTARS)	(101,041,713)	25,008,801	14,141,165	3,483,943	1,829,212	(56,578,592)
	Variance	106,721,724	62,658,258	(14,099,268)	(3,483,943)	(67,696,432)	84,100,339
VoteCal†	Expenditures per HAVA spending plan	1,071,865	1,530,650	1,485,689	4,689,403	5,070,988	13,848,595
	Expenditures per CALSTARS	265,631	1,625,234	1,419,575	3,888,522	2,364,008	9,562,970
	Variance	806,234	(94,584)	66,114	800,881	2,706,980	4,285,625
Administration	Expenditures per HAVA spending plan	1,745,000	1,655,000	1,655,000	1,705,000	1,605,000	8,365,000
	Expenditures per CALSTARS	956,715	1,928,204	1,046,595	1,045,893	717,561	5,694,968
	Variance	788,285	(273,204)	608,405	659,107	887,439	2,670,032
Total Spending	Expenditures per HAVA spending plan	\$10,113,876	\$90,184,163	\$5,839,630	\$8,365,698	\$(56,957,812)	\$57,545,555
	Total expenditures per CALSTARS	\$(96,798,625)	\$20,697,044	\$17,322,816	\$9,440,564	\$6,651,663	\$(42,686,538)

Sources: Accounting records provided by the Office of the Secretary of State (Office) and the Office’s December 2011 HAVA spending plan.

Note: Our intention was to simply display how the Office has accounted for its HAVA transactions. Please refer to Appendix B of our audit report for more information about the classification issues we identified during the audit.

* State accounting policies require state agencies to accrue expenditures as of June 30 of each year and then to reverse the accrual in the subsequent fiscal year, which can result in a negative expenditure amount if the amount accrued is not fully liquidated after year end. The \$101 million in negative expenditures shown in fiscal year 2006–07 are principally the result of \$179 million in prior-year accruals that the secretary of state had reversed related to county grants for the replacement of their voting systems. Thus, the variance of \$106 million in fiscal year 2006–07 for voting system replacement is magnified by the effect of these reversed prior-year accruals. Nevertheless, the Office’s HAVA spending plan still significantly varies from information in its CALSTARS accounting system. For example, after adjusting for the reversed accruals, the Office recorded roughly \$78 million in expenses for voting system replacement during fiscal year 2006–07.

† The costs we have included for VoteCal in our analysis include the costs associated with the Office redirecting its staff to work on the project plus the costs of upgrading its current voter registration database, CalVoter, and its related systems.

We provided the information shown in Table 6 to the Office's acting deputy secretary for operations and the chief of the Office's management services division to obtain the Office's perspective on the variances we noted. In response, the acting deputy secretary for operations, in consultation with her staff, stated that the Office never intended for the historical expenditures shown in the HAVA spending plan to be based on its financial records. She further stated that the HAVA spending plan was a budget tool and that the historical spending amounts shown in that tool reflect proposed expenditures and not actual expenditures. However, the acting deputy secretary for operation's explanation is inconsistent with how the Office has characterized at least some of these costs in its HAVA spending plan. For example, for the fiscal year 2012–13 HAVA spending plan, dated December 2011, the Office provided historical spending information on its local assistance grants to counties for voting system replacement under Title III. The Office referred to these prior spending amounts as "actual" costs and even stated the accounting methodology when describing how it had accounted for this spending. By claiming to provide the public and the Legislature with "actual" spending amounts when in fact these figures are simply "planned" amounts that do not tie to its accounting records, the Office risks confusing the public and the Legislature about the financial information it is providing. The acting deputy secretary for operations stated that the spending plan format was developed in conjunction with Finance, the Legislative Analyst's Office, and legislative consultants. Furthermore, according to the acting deputy secretary for operations, the Legislature and Finance are satisfied with the quality of the information contained in the Office's HAVA spending plan.

The HAVA spending plan serves as a key accountability and transparency tool for the Legislature. The Legislature began requiring this transparency by inserting language into the annual Budget Act that required the Office to provide more detailed information on HAVA spending. In the fiscal year 2004–05 Budget Act—the first year in which the Legislature required a spending plan per the Budget Act—it stated, "It is the intent of the Legislature that the [HAVA] spending plan provide more specific details as to the effective use of the funds than have been previously provided and that the public policy goals behind the spending plan be made more explicit." Thus, by failing to provide the Legislature with HAVA spending information that agrees with its accounting records, the Office has limited the Legislature's and the public's ability to evaluate HAVA's costs.

The Office has demonstrated weaknesses in how it manages its HAVA spending in relation to the spending authority provided by the Legislature.

In addition, we noted that the Office has demonstrated weaknesses in how it manages its HAVA spending in relation to the spending authority provided by the Legislature. Specifically, the Office classified more than \$34 million in HAVA costs in its accounting system as *Other Items of Expense* that were actually used for local grants paid from what was originally a support appropriation.

State agencies, such as the Office, generally cannot make payments unless they have the spending authority to do so, and such spending authority commonly comes from legislative *appropriations* provided in the annual budget acts that are for specific purposes, such as for *support* or *local assistance*. Support appropriations include spending authority for the Office's general support, such as salaries and benefits for its employees. Local assistance appropriations provide the Office with spending authority for activities such as grants to counties. In this case, the Office relied on budget control language to request approval from Finance to use spending authority—that was originally for support—for local assistance.

Although Finance approved this request and informed the Legislature that it had done so, the request would not have been necessary had the Office promptly committed to using the spending authority the Legislature had provided previously. Specifically, the Legislature had provided the Office with more than \$200 million in spending authority from fiscal year 2004–05 to make local assistance payments, and the Office had until June 30, 2006, to fully commit to using this spending authority. The Office can make such commitments by entering into grant agreements or contracts with counties. However, despite informing Finance that it had executed 56 of 58 county contracts by June 30, 2006—the deadline for committing future spending against the fiscal year 2004–05 local assistance appropriation—it appears that the Office did not record these commitments correctly, and consequently the Office acknowledged that it lost the ability to fully use this appropriation. More than a year elapsed between the time when the Office lost its ability to commit spending to its local assistance appropriation—June 30, 2006—and the time when it obtained Finance's approval to use its support appropriation for local assistance costs in October 2007. In our opinion, the Office would have better facilitated legislative oversight for HAVA spending had it sought a new local assistance appropriation as part of the fiscal year 2007–08 budget act. Furthermore, had the Office's HAVA spending plan presented historical spending by specific appropriation and activity, the Legislature would have had a clearer picture of how the Office was using its HAVA appropriations.

The Office Should Work Proactively With the California Department of Motor Vehicles and the Legislature to Ensure Full Implementation of a Key Requirement of the National Voter Registration Act

A key component of the National Voter Registration Act of 1993 (NVRA)—sometimes referred to as the “Motor Voter” law—is the requirement that an application submitted for a driver's license simultaneously serve as an application to register to vote

for an eligible citizen. However, our review of some California Department of Motor Vehicles (DMV) offices in Sacramento found that the driver's license application does not act as a simultaneous application for voter registration. Instead, applicants for a driver's license fill out a driver's license application form and receive a separate voter registration card. Although we recognize that these practices were designed to respond to a 1995 court order, that court order was lifted in 1999 and California has since not taken the steps necessary to come into full compliance with this important NVRA requirement.

The NVRA requires that a state's chief election official—who, in California, is the secretary of state—be responsible for coordinating the state's responsibilities under the act. State law further prescribes the duties of the secretary of state, which include providing training and guidance to the agencies that the State has designated as voter registration agencies and contacting an agency if it is not complying with the NVRA. Further, the secretary of state has authority to conduct a review of a voter registration agency to determine its compliance with the NVRA.

Although the Office has conducted trainings on NVRA compliance and has developed an NVRA compliance manual for the designated agencies to follow, we found that the Office's guidance to the DMV is inconsistent with a strict reading of the NVRA. Specifically, the NVRA establishes the expectation that an application for a driver's license shall simultaneously serve as an application for voter

registration. Further, the NVRA states that the voter registration application portion of the driver's license application "may not require any information that duplicates information required in the driver's license portion of the form." A benefit of having the driver's license application serve as a voter registration application is that it makes registering to vote easier by not requiring the individual to provide duplicate information. Nevertheless, when we visited DMV offices in the Sacramento area, we noted that the voter registration form was attached to the driver's license application and that it requested duplicate information. Examples of the duplicate information requested on the driver's license application and voter registration form are shown in the text box.

Duplicate Voter Information Required on California's Driver's License Application

The California Department of Motor Vehicles (DMV) requests the following information twice:

- Name
- Address
- Social Security number
- Date of birth
- Driver's license number

Sources: DMV's Driver License Application and the California Voter Registration Form.

These practices, which do not appear to comport with a strict reading of the NVRA, were put in place as a result of a 1995 court order that was issued in the context of litigation between the State of California and the federal government wherein California

challenged the constitutionality of the NVRA and sought an injunction that would prevent it from having to enforce the NVRA. The State did not prevail in this lawsuit, and a 1995 federal court order directed the State to comply with the NVRA, to submit an NVRA implementation plan, and to specify the dates by which the State would be in full compliance with the NVRA. The State submitted its plan in accordance with the court order, and the court ordered the State to implement the plan. That plan contained the procedures we observed at DMV offices. In 1999 the court lifted the order and recognized California's continued efforts to comply with the NVRA.

Although the court order is no longer in place, the State of California continues to employ practices at its DMV offices that, while consistent with the 1995 court order, do not comport with a strict reading of the NVRA, which calls for the use of a single form to both apply for a driver's license and register to vote. Legislation proposed in 2013, but not enacted, recognized this issue and would have required the Office and the DMV to take the necessary steps to further comply with this requirement. Even without this legislation, we believe that the Office and the DMV should take whatever steps are necessary, including seeking any necessary legislative changes, so that California is in full compliance with this requirement.

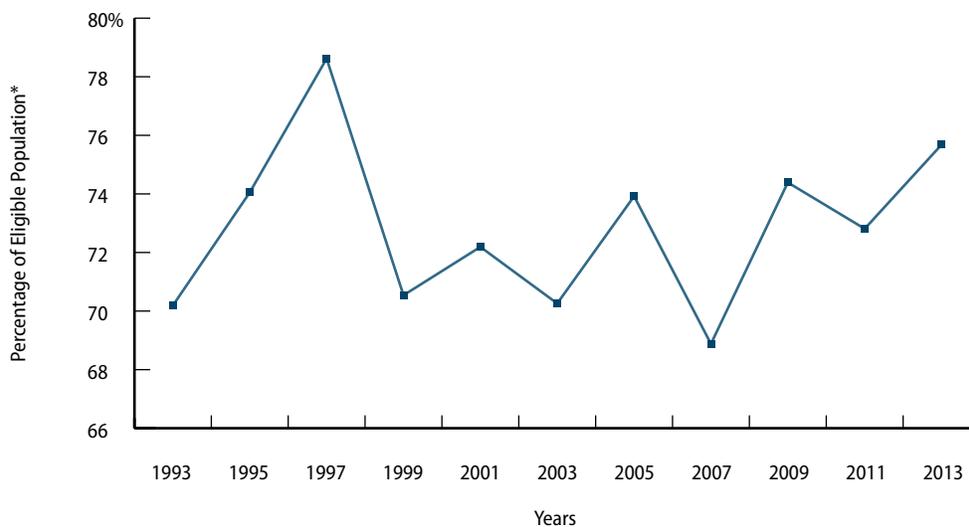
In addition to visiting certain DMV offices during our audit, we visited an office at the California Department of Rehabilitation and an office in Sacramento County that administers a public assistance program, both of which are designated as voter registration agencies. Under both the NVRA and California law, a voter registration agency that also provides service or assistance is required—with each application for service—to provide a voter registration form, a voter preference card unless the applicant declines, and assistance in completing the form unless the applicant refuses the assistance. Neither office fully complied with certain aspects of these NVRA requirements. At the California Department of Rehabilitation, the application packet did not contain a voter registration application form, only a card asking if the applicant wanted to register to vote. Although this may seem like a minor instance of noncompliance, a state can be sued in federal court based on a claim that it fails to comply with the NVRA. Furthermore, providing a member of the public with a voter registration form at the same time as providing an application for public services would seem, in our view, to be the most effective way for designated agencies to fully implement and achieve the NVRA's goals and objectives. In Sacramento County we asked county employees for applications for public assistance and similarly noted that the application did not include information on voter registration. When we asked county employees whether

The Office and the DMV should take whatever steps are necessary, including seeking any necessary legislative changes, so that California is in full compliance with the NVRA.

we could register to vote, we were told we would receive those registration forms later in the process, once we submitted the public assistance application. However, this approach by Sacramento County seems inconsistent with guidance the Office issued, which advised designated agencies that they must offer applicants an opportunity to register to vote each time a person applies for benefits.

Based on Figure 4, it is difficult to determine what effect, if any, the State's approach to implementing NVRA has had on voter registration rates in California. Many factors can influence an individual's decision as to whether he or she wishes to register to vote. Nevertheless, it appears that the State and the Office can do more to potentially increase voter registration rates. In Figure 4 we provide voter registration data from the Office for years 1993 through 2013. Although there have been periods of increased registration, reaching nearly 80 percent in 1997, overall voter registration as a percentage of the eligible population does not appear to have significantly changed between 1993 and February 2013.

Figure 4
California Voter Registration Rates
1993 Through February 2013



Source: Unaudited information provided by the Office of the Secretary of State (Office).

Note: We present this information to provide the reader with background information on voter registration rates. Our audit does not draw any conclusions from, nor did we audit, these data.

* According to the Office, the "eligible population" figure used to calculate the voter registration rate is unofficial but is based on U.S. Census data, as adjusted by information from the California Department of Finance and the California Department of Corrections and Rehabilitation.

The State Should Designate Additional Voter Registration Agencies

The NVRA is intended to make voter registration easier and to increase voter registration. To further these goals, the NVRA requires that all state entities that provide public assistance and all state entities that provide state-funded programs primarily engaged in providing services to persons with disabilities, be designated as voter registration agencies. Beyond these “mandatory” voter registration designations, the NVRA requires that each state designate additional voter registration entities but gives states discretion as to which specific entities to designate. Suggested entities include state and local government offices such as schools and libraries, unemployment compensation offices, and government revenue offices.

In 1994 former Governor Pete Wilson issued an executive order that designated certain state and local agencies as voter registration agencies. This included designating various entities that provide public assistance, such as county welfare offices, as well as offices that provide public service primarily to persons with disabilities (California Department of Rehabilitation). In addition, as required by the NVRA, the 1994 executive order designated additional voter registration agencies, and those included the Franchise Tax Board and the State Board of Equalization.

Subsequent to the issuance of the 1994 executive order, the Office has designated additional voter registration agencies. Some of those designations expanded on the designation of offices that primarily engage in providing services to persons with disabilities, and included the California Department of Developmental Services’ regional centers, state and county mental health providers, and others. Most recently, the Office designated the newly created California Health Benefit Exchange (Covered California) as a voter registration agency.

The Office believes that the secretary of state has the authority to designate voter registration agencies based on the requirements contained in NVRA and has done so previously. Moreover, the Office does not believe that the relevant provisions of state law that authorize the designation of voter registration agencies for the purposes of the NVRA limit the authority to make such designations to the governor or to the Legislature. Nonetheless, we believe that legislative clarification that expressly states that the secretary of state possesses the authority to designate voter registration agencies for the purpose of NVRA would be beneficial.

Despite the fact that it has made these designations and satisfied the voter registration designation requirements of the NVRA, we believe the State could do more to increase voter registration by designating additional voter registration entities. For example, as an unemployment

Legislative clarification that expressly states that the secretary of state possesses the authority to designate voter registration agencies for the purpose of NVRA would be beneficial.

compensation office, the California Employment Development Department plays an important service role and could serve as a voter registration agency. Also, the State could designate other state departments and agencies and other county- and city-based entities that have significant interaction with the public. These additional designations could, in our view, further increase the rates of voter registration in California.

Recommendations

To ensure that the public, county registrars, and potential voting system developers understand how the secretary of state will make voting system approval decisions, the Office should make it a priority to develop regulations describing voting system standards in accordance with state law. It should begin the formal rule-making process by January 2014.

To comply with federal requirements for record retention, the Office should revise its record retention policy for long-term federal awards such as HAVA.

To ensure that the State has maximum flexibility in how it spends the remaining HAVA funds, the Office should do the following:

- Formally renegotiate its agreement with Justice by discussing the need to pursue VoteCal and obtaining clarity as to what aspect of the current CalVoter system, if any, does not meet HAVA's requirements.
- Report, by December 2013, the results of these discussions with Justice to the Legislature. If the Office continues to believe it is compliant with Title III requirements, it should take the necessary steps to maximize the Legislature's flexibility to decide how best to appropriate the remaining HAVA funds.

To enhance the value of the HAVA spending plan as a transparency and accountability tool for the Legislature, the Office should make the following modifications to its annual HAVA spending plan:

- Clearly state the methodology used to report prior HAVA expenditures in the HAVA spending plan. Such a methodology should use the financial information contained in its accounting system.
- Reconcile the prior HAVA expenditures with the year-end financial reports the Office provides to the California State Controller's Office.

- Present prior HAVA expenditures by activity and by specific appropriation.

To ensure that the State complies with the NVRA, the Office should take all necessary steps, including seeking any necessary legislative changes, and work with the DMV to modify the driver's license application so that it may simultaneously serve as a form for voter registration.

To maximize voter registration, the State should designate additional state and local entities that could reasonably assist with increasing voter registration.

To ensure that the secretary of state has the authority to designate voter registration agencies under the NVRA, the Legislature should expressly define who may make such designations.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: August 8, 2013

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For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

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Appendix A

STATUS OF RECOMMENDATIONS FROM PRIOR AUDIT

In December 2004 we issued a report titled *Office of the Secretary of State: Clear and Appropriate Direction Is Lacking in Its Implementation of the Federal Help America Vote Act*, Report 2004-139 (2004 audit report). This report concluded that insufficient planning and poor management practices by the Office of the Secretary of State (Office) hampered its efforts to implement the requirements of the federal Help America Vote Act of 2002 (HAVA) in a timely way. Specifically, the 2004 audit report found that the Office had failed to develop a detailed implementation plan for each of its HAVA-related projects, had disregarded controls, and had exercised poor oversight of staff and consultants. Additionally, the Office had bypassed the Legislature's spending approval authority when it contracted and paid consultants in fiscal year 2004–05. Finally, the 2004 audit report noted that the Office had failed to disburse voting system funds within the time frames outlined in its grant application package. In the 2004 audit report, the California State Auditor (state auditor) made 17 recommendations to the Office.

In 2012 the Joint Legislative Audit Committee asked us to determine if the Office had implemented the recommendations from the 2004 audit report and, if not, to assess its progress or reasons for not implementing those recommendations. Based on our follow-up, we determined that the Office has fully implemented 14 recommendations, has partially implemented two, and the remaining recommendation was no longer applicable because the Office's practice in this area had changed. Table A on the following pages summarize our determinations regarding the implementation of the state auditor's 2004 recommendations.

Table A
Status of Prior Recommendations Made to the Office of the Secretary of State Regarding the Federal Help America Vote Act of 2002

RECOMMENDATION	STATUS OF RECOMMENDATION	RESPONSE BY THE OFFICE OF THE SECRETARY OF STATE
<p>To ensure that it successfully implements the requirements called for in the federal Help America Vote Act of 2002 (HAVA), the Office of the Secretary of State (Office) should take the following steps:</p>		
1 Develop a comprehensive implementation plan that includes all HAVA projects and activities.	<p>Fully implemented. It appears that the Office has fully complied with HAVA Title III, and it developed implementation plans prior to the 2010 state plan.</p>	<p>NA</p>
2 Designate the individuals responsible for coordinating and assuring the overall implementation of the plan.		
3 Identify and dedicate the resources necessary to carry out the plan and assign roles and responsibilities accordingly.		
4 Establish timelines and key milestones and monitor to ensure that planned HAVA activities and projects are completed when scheduled and that they meet expectations.		
<p>To establish or strengthen controls, comply with federal and state laws, and reduce the risk that HAVA funds are spent inappropriately, the Office should take the following actions:</p>		
5 Develop clear job descriptions for employees working on HAVA activities that include expectations regarding conflicts of interest, incompatible activities, and any other requirements important in administering federal funds.	<p>Fully implemented. The Office has duty statements for full-time HAVA employees and has demonstrated that employees acknowledged conflicts of interest and incompatible activities.</p>	<p>NA</p>
6 Establish and enforce a policy prohibiting partisan activities by employees and consultants hired by the Office; periodic staff training and annual certification by all employees that they have read and will comply should be part of this policy.	<p>Partially implemented. The Office has established a political activities policy for its employees and contractors, which employees sign acknowledging receipt of the policy. This policy is also incorporated into its contracts. However, according to the Office's human resources manager, the Office does not require employees to certify annually, nor does it provide periodic training about the policy.</p>	<p>According to the management services division chief, the Office is in the process of reviewing annual updates of all policies from staff and periodic staff training for all employees.</p>
7 Standardize the language used in all consultant contracts to include provisions regarding conflicts of interest and incompatible activities, such as partisan activities.	<p>Partially implemented. The Office's HAVA consulting contract contained or referenced provisions regarding conflicts of interest and incompatible activities, such as partisan activities. However, the Office does not appear to require consultants to complete a statement of economic interests in accordance with the Office's conflict-of-interest code.</p>	<p>According to the management services division chief, the Office is currently reviewing its procedures for conflicts of interest regarding consultants.</p>
8 Ensure that time charged to HAVA or any other federal program is supported with appropriate documentation, including time sheets and certifications.	<p>Fully implemented. The Office's employees use time sheets, and the employee's supervisor approves the time sheet of the employee working on HAVA.</p>	<p>NA</p>

RECOMMENDATION	STATUS OF RECOMMENDATION	RESPONSE BY THE OFFICE OF THE SECRETARY OF STATE
9 When competition is not used to award contracts, establish a process to screen and hire consultants.	<p>Fully implemented. The Office’s contract award methods are appropriate and comply with applicable policies and procedures for the 10 HAVA contracts we reviewed. In addition, the contracts included a detailed description of the scope of work, specific services and work products, and responsibilities.</p> <p>Note: We found that the competition for the Catalyst Consulting Group, Inc. contract followed applicable policies and procedures because although the procurement resulted in one qualified bidder, multiple bids were received and the solicitation was advertised.</p>	NA
10 Follow control procedures for the review and approval of contracts to ensure that contracts include a detailed description of the scope of work, specific services and work products, and performance measures.		
11 Follow competitive bidding requirements to award contracts and restrict the use of exemptions to those occasions that truly justify the need for them.		
12 Follow General Services policies when using California Multiple Award schedules for contracting needs.		
13 Require that contract managers monitor for the completion of contract services and work products prior to approving invoices for payment.	<p>Fully implemented. The Office generally complied with contract monitoring policies and procedures for the 10 HAVA contracts we evaluated. In addition, the contract managers monitored for completion of work before approving invoices for payment and reviewed the invoices to ensure that the charges to be paid were reasonable.</p>	NA
14 Review invoices to assure that charges to be paid with HAVA funds are reasonable and allowable and conform to the terms of the contract.		
15 Comply with state policy for procuring commodities.	<p>Fully implemented. The Office demonstrated that it followed state policies when procuring commodities, such as information technology hardware.</p>	NA
16 Prohibit fiscal year 2004–05 expenditures for HAVA activities until it receives spending authority from the California Department of Finance (Finance) and the Legislature.	<p>Fully implemented. Although the Office spent \$34 million on grants without a local assistance appropriation, as we discuss on page 30 of the audit report, Finance provided the Office with the spending authority to do so.</p>	NA
17 Disburse federal HAVA funds to counties for voting machine replacement within the time frames set out in its grant application, procedures, and contracts.	<p>Practice changed—no longer valid. The Office’s current county contracts reimburse counties for HAVA expenses. Further, counties spend funds and seek reimbursement for HAVA activities at their discretion.</p>	NA

Source: California State Auditor’s evaluation of documentation provided by the Office of the Secretary of State.
NA = Not applicable.

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Appendix B

THE OFFICE OF THE SECRETARY OF STATE'S SPENDING OF FEDERAL FUNDS UNDER THE FEDERAL HELP AMERICA VOTE ACT OF 2002 (FISCAL YEARS 2006-07 THROUGH 2011-12)

The Joint Legislative Audit Committee requested that we determine how the Office of the Secretary of State (Office) has spent funds under the federal Help America Vote Act of 2002 (HAVA) since we published our previous audit of the Office in December 2004. As a result, we requested that the Office provide us with a complete electronic copy of its California State Accounting and Reporting System's (CALSTARS) financial records for fiscal years 2004-05 through 2011-12, which was the most recently completed fiscal year at the time of our request in December 2012. The Office complied with our request but advised us that its records for fiscal years 2004-05 and 2005-06 were based on a previous proprietary accounting system that the Office no longer uses. However, the Office did provide us with some hardcopy budget reports for those fiscal years but acknowledged that it no longer has complete access to its previous accounting system's records. The Office's document retention policy for accounting records is four years following the end of the fiscal year. As a result, the Office explained that it had complete accounting records going only back to fiscal year 2008-09.

Upon our review of the hardcopy budget reports, we determined that the reports for fiscal years 2004-05 and 2005-06 may not be accurate; however, we could not audit the reports because the Office had disposed of the supporting documents, in accordance with its record retention policies. As a result, the HAVA expenditure information we present excludes spending amounts from those two fiscal years. Federal regulations governing how states are to manage federal awards, such as HAVA, require that the Office maintain complete financial records for three years following its last federal financial report. The Office has not submitted its last federal financial report, since it has not finished spending HAVA funds. Therefore, the Office should have retained the financial records.

Table B.1 on the following pages provides information on how the Office has classified its HAVA expenses for the fiscal years shown. For example, the table shows how much the Office has charged for the salaries and benefits of its staff; how much it has paid to consultants; and how much it has spent on local assistance, such as grants to counties. Although the information presented in Table B.1 accurately reflects how the Office recorded its HAVA expenses within its CALSTARS accounting system, we did not perform procedures to audit the accuracy of this spending

information because the Office's record retention policy prevented us from auditing information for certain years. Furthermore, our audit noted that the Office has classified roughly \$34 million as *Other Items of Expense* instead of *Grants and Subventions*, based on the approval it received from the California Department of Finance. This classification issue began in fiscal year 2007–08 and has continued through fiscal year 2011–12. We have not adjusted the expenditure amounts shown in our tables to account for this classification issue. Nevertheless, we do have reasonable assurance that the total expenditure amounts shown are complete because we have reconciled the total expenditures shown in the table with similar information the California State Controller's Office maintains.

Table B.1
Schedule of Federal Trust Fund Expenses as Recorded by the Office of the Secretary of State for the Federal Help America Vote Act of 2002, by Type of Expense
Fiscal Years 2006–07 Through 2011–12

FEDERAL HELP AMERICA VOTE ACT OF 2002 (HAVA) EXPENSE BY TYPE*	FISCAL YEAR						TOTALS
	2006–07†	2007–08	2008–09	2009–10	2010–11	2011–12	
Personal Services—Salaries and Wages	\$440,582	\$491,356	\$596,242	\$833,143	\$546,307	\$726,468	\$3,634,097
Staff Benefits	187,211	159,567	199,513	285,844	199,658	265,902	1,297,693
General Expense	143,404	(5,169)	15,359	22,379	2,065	3,961	182,000
Printing	(547,814)	6,092	2,934	11,727	19,483	20,902	(486,677)
Communications	65,386	106,506	58,869	22,664	293,467	31,808	578,700
Postage	10,909	0	0	0	0	0	10,909
Travel (In-State)	33,250	23,441	1,485	13,842	3,560	11,759	87,337
Travel (Out of State)	23,862	2,637	1,846	575	1,001	544	30,464
Training	350	0	0	1,063	2,298	0	3,711
Facilities Operation (rent, janitorial, etc.)	494	0	0	0	0	0	494
Utilities	158	0	0	0	0	0	158
Consultant and Professional Services—Interdepartmental	289,743	236,921	162,109	268,295	210,043	487,181	1,654,293
Consultant and Professional Services—External	734,171	(793,375)	1,029,335	2,859,003	1,088,857	1,298,828	6,216,820
Departmental Services	2,120	911,102	250,807	544,773	96,196	808,162	2,613,160
Information Technology	41	0	0	11,066	65,361	262,377	338,845
Central Administrative Services	313,000	174,000	294,134	157,728	369,936	267,257	1,576,055
Equipment	3,110	0	0	0	18,651	13,664	35,425
Other Items of Expense	211	10,171,446	14,613,369	3,576,550	1,829,212	4,396,768	34,587,555
Special Adjustments	6,918,665	(8,162,000)	0	0	0	0	(1,243,335)

HELP AMERICA VOTE ACT OF 2002 (HAVA) EXPENSE BY TYPE*	FISCAL YEAR						TOTALS
	2006-07 [†]	2007-08	2008-09	2009-10	2010-11	2011-12	
Board of Control Claims	0	0	95,882	(95,882)	0	0	0
Grants and Subventions	(105,417,477)	16,410,608	931	927,797	1,905,567	1,271,377	(84,901,197)
Total HAVA Expenses	\$(96,798,625)	\$19,733,132	\$17,322,816	\$9,440,564	\$6,651,663	\$9,866,958	\$(33,783,492)
OTHER HAVA TRANSACTIONS							
Loans, Transfers and Other [‡]	0	3,242,804	0	0	31,991,503	0	35,234,307
Grand Total HAVA Expenses and Other Transactions	\$(96,798,625)	\$22,975,936	\$17,322,816	\$9,440,564	\$38,643,166	\$9,866,958	\$1,450,815

Source: Office of the Secretary of State's (Office) accounting system—California State Accounting and Reporting System—for the fiscal years shown.

* State accounting policies require state agencies to accrue expenditures as of June 30 of each year and then to reverse the accrual in the subsequent fiscal year, which can result in a negative expenditure amount. In addition, negative amounts may also represent corrections to previously recorded expenditures, such as when a federal audit requires the Office to reimburse certain costs. Amounts have been rounded to the nearest dollar, which may cause minor differences with the totals shown.

† The negative expenditures shown in fiscal year 2006-07 are principally the result of prior-year accruals that the secretary of state had reversed. A substantial portion of these accrual reversals pertain to grant funds related to the replacement of county voting systems (roughly \$179 million). The total negative HAVA expenditures shown in the table primarily reflect that the Office, in the aggregate, has recognized HAVA expenses before fiscal year 2006-07 and has yet to fully liquidate these previous accruals. Our intention was to simply display how the Office has accounted for its HAVA transactions.

‡ The "Other HAVA Transactions" shown in the table are primarily transfers from the Federal Trust Fund to the Special Deposit Fund. When the Office receives certain HAVA funds, it initially records receipt in the Federal Trust Fund and then transfers the funds to the Special Deposit Fund to earn interest. Roughly \$964,000 of the \$3.2 million shown in fiscal year 2007-08 are not transfers but rather are the result of adjustments the Office made to move certain HAVA costs that had been recognized in an earlier fiscal year.

Table B.2 on the following page provides HAVA spending information by activity. The Office tracks HAVA spending activity in different program cost accounts (PCAs) within its CALSTARS accounting system. Each activity category shown in Table B.2, such as HAVA Compliant Voting Systems, is the summation of numerous PCAs based on the PCA title as the Office defines it. For example, certain PCAs contain the word "VoteCal" in their official title. During the audit, we grouped these VoteCal PCAs into a broader activity called *Statewide Computerized Voter Registration List (VoteCal)*, as shown in Table B.2, and we followed a similar exercise for other HAVA activities and PCA groupings. We shared our methodology and PCA groupings with the Office, and it generally agreed with our approach. As with Table B.1, we did not audit the accuracy of the information presented in Table B.2 due to the Office's record retention policies previously discussed. Nevertheless, we do have reasonable assurance that the total expenditure information is complete because we have reconciled these totals to those the California State Controller's Office maintains.

Table B.2
Schedule of Federal Trust Fund Expenses as Recorded by the Office of the Secretary of State for the Federal Help America Vote Act of 2002, by Activity
Fiscal Years 2006–07 Through 2011–12

FEDERAL HELP AMERICA VOTE ACT OF 2002 (HAVA) EXPENSES BY ACTIVITY*	FISCAL YEAR						TOTALS
	2006–07 [†]	2007–08	2008–09	2009–10	2010–11	2011–12	
HAVA Compliant Voting Systems	\$(101,041,713)	\$25,008,801	\$14,141,165	\$3,483,943	\$1,829,212	\$5,181,671	\$(51,396,922)
Statewide Computerized Voter Registration List (VoteCal)	219,307	1,173,582	1,288,338	3,747,889	2,095,891	2,113,263	10,638,270
Statewide Computerized Voter Registration List (CalVoter/CalValidator)	46,323	451,652	131,237	140,633	268,117	459,970	1,497,932
Election Assistance for Individuals with Disabilities	(2,157,972)	1,215,930	494,523	990,775	1,486,295	482,248	2,511,798
Administrative Costs Charged to HAVA	956,715	1,928,204	1,046,595	1,045,893	717,561	1,452,197	7,147,164
Poll Monitoring [‡]	68,789	67,827	40	59	13,768	47,366	197,848
Post-Election Audits	0	0	0	0	0	74,883	74,883
Other HAVA-Related Activities	(1,119,385)	641,027	220,919	31,373	240,819	55,361	70,115
Various HAVA Expenses Charged to Previous Appropriations [§]	6,229,310	(9,789,979)	0	0	0	0	(3,560,669)
Total HAVA Expenses	\$(96,798,625)	\$20,697,044	\$17,322,816	\$9,440,564	\$6,651,663	\$9,866,958	\$(32,819,580)
OTHER HAVA TRANSACTIONS							
Transfers to the Special Deposit Fund	0	2,278,892	0	0	31,991,503	0	34,270,395
Grand Total HAVA Expenses and Other Transactions	\$(96,798,625)	\$22,975,936	\$17,322,816	\$9,440,564	\$38,643,166	\$9,866,958	\$1,450,815

Source: Office of the Secretary of State's (Office) accounting system—California State Accounting and Reporting System (CALSTARS)—for the fiscal years shown.

* State accounting policies require state agencies to accrue expenditures as of June 30 of each year and then to reverse the accrual in the subsequent fiscal year, which can result in a negative expenditure amount. In addition, negative amounts may also represent corrections to previously recorded expenditures. Amounts have been rounded to the nearest dollar, which may cause minor differences with the totals shown.

[†] The negative expenditures shown in fiscal year 2006–07 are principally the result of prior-year accruals that the Office had reversed. A substantial portion of these accrual reversals pertain to grant funds related to the replacement of county voting systems (roughly \$179 million). The total negative HAVA expenditures shown in the table primarily reflect that the Office, in the aggregate, has recognized HAVA expenses before fiscal year 2006–07 and has yet to fully liquidate these previous accruals. Our intention was to simply display how the Office has accounted for its HAVA transactions.

[‡] The Office indicated that \$4,578 of the \$67,827 shown in fiscal year 2007–08 should be recognized as "HAVA Compliant Voting Systems" in our table, since the title of one of its program cost accounts was incorrect. Since our methodology was to simply display how the Office has accounted for its HAVA expenditures, we have not made this adjustment.

[§] Beginning with fiscal year 2006–07, the Office began using CALSTARS as its official accounting system. The Office established certain program cost accounts within CALSTARS to track expenditures from appropriations provided during fiscal years 2003–04, 2004–05, and 2005–06. We have not applied these expenditures to the other HAVA expenditure activities shown in the table.

^{||} The "Other HAVA Transactions" shown in the table are transfers from the Federal Trust Fund to the Special Deposit Fund. When the Office receives certain HAVA funds, it initially records receipt in the Federal Trust Fund and then transfers the funds to the Special Deposit Fund to earn interest. The amount shown above as "Other HAVA Transactions" differs from the amount shown in Table B.1 by roughly \$964,000. The \$964,000 is costs associated with a correction the Office made by moving HAVA costs originally recorded in an earlier fiscal year.

Appendix C

STATUS OF THE OFFICE OF THE SECRETARY OF STATE'S IMPLEMENTATION OF TITLE III OF THE FEDERAL HELP AMERICA VOTE ACT OF 2002

The Joint Legislative Audit Committee (audit committee) requested that we review the federal Help America Vote Act of 2002 (HAVA) state plan and any updates and assess the progress of the Office of the Secretary of State (Office) in implementing the state plan. The audit committee also required that we determine to what extent the state plan has not been implemented, the causes for the delay, and the steps the Office needs to take to fully comply with HAVA. To address these objectives, we obtained and reviewed the Office's original 2003 state plan titled *My Vote Counts: California's Plan for Voting in the 21st Century*. We also reviewed the Office's updates to this document in 2004 and again in 2010.

The ultimate goal of the state plan is to describe how the State will use the nearly \$300 million it received to comply with the requirements found in HAVA Title III (Title III). Once the State declares its compliance with Title III, it may spend any remaining HAVA funds on improving the administration of federal elections through activities such as additional county grants for voting system replacement and poll worker training or for the Office's attempt to deploy a new computerized statewide voter registration list called VoteCal. Given the ultimate objective of the state plan, in Table C on the following pages we assess the State's compliance with the significant requirements of Title III based on our review of available documentation and our discussions with the Office's senior staff.

Table C
Auditor's Assessment of California's Compliance With the Material Requirements Under Title III of the Federal Help America Vote Act of 2002

FEDERAL HELP AMERICA VOTE ACT OF 2002 (HAVA) SECTION		DESCRIPTION OF REQUIREMENT	STATUS/EXPLANATION
301 - Voting System Standards			
(a) - Requirements			
1	In general	The voting system shall permit the voter to verify (in a private and independent manner) the votes selected before casting the ballot. If the voter notices an error, the voter can correct the ballot before it is cast or obtain a replacement ballot. Finally, voters are notified of the consequences of voting for more than one candidate for a single office.	Implemented: State law allows voters to vote in private and to obtain up to two additional replacement ballots if needed. Voters can review their paper-based ballots in the voting booth. State law requires direct electronic recording (DRE) voting systems to include an accessible, voter-verified paper audit trail (AVVPAT). Voters using DRE voting systems can review this paper record before casting their ballot. Required displays at polling places, such as the <i>Voter Bill of Rights</i> , further emphasize the voter's right to correct spoiled ballots before voting. Finally, the Office of the Secretary of State (Office) has ensured that voters are aware of the consequences for overvoting by requiring poll workers to notify voters and using voting systems that alert the voter of overvotes.
2	Audit capacity	The voting system shall produce a permanent paper record with a manual audit capacity. The voter shall have an opportunity to correct his or her ballot before the permanent paper record is produced. The permanent paper record produced shall be an official record for any recount.	Implemented: All ballots cast in federal elections on paper-based voting systems, such as optical scan voting systems, must be kept by local election officials for a period of 22 months under state law for potential audits or recounts. Similarly, state law requires DRE voting systems to produce an AVVPAT record of each vote cast. Our review of poll worker training guidelines and other materials demonstrated that voters have the ability to correct their ballots before voting.
3	Accessibility for individuals with disabilities	The voting system shall be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired. States can satisfy this requirement by using at least one DRE voting system or other system equipped for the disabled at each polling place.	Implemented: For certain DRE voting systems, the Office requires that each polling place have no more than one DRE voting unit to satisfy the HAVA accessibility requirements. Counties may use other non-DRE voting systems designed to assist the disabled that are approved by the secretary of state.
4	Alternative language accessibility	The voting system shall provide alternative voting language accessibility.	Implemented: Optical scan and other paper-based ballots can be printed in various languages. For example, Los Angeles County provides ballots in seven different languages. DRE voting systems can also be programmed to offer ballots in various languages.
5	Error rates	The error rate of the voting system in counting ballots shall comply with the error rate standards established by the Federal Election Commission (FEC) in effect on October 29, 2002.	Implemented: State law prohibits the Office from approving DRE voting systems unless the system has received federal approval. Although the Office lacks regulations defining how it evaluates voting systems and what standards it applies, it asserted that its process requires that any voting system considered for use in California first receive federal approval, which would satisfy the error rate requirement referenced in HAVA.
6	Uniform definition of what constitutes a vote	Each state shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the state.	Implemented: The Office has published standards defining the circumstances under which the marking of a ballot constitutes a vote and when such a vote is invalid. These standards include instructions for counties using various voting systems, such as optical scan voting systems and DRE voting systems.

302 - Provisional Voting and Voting Information Requirements

(a)–Provisional Voting Requirements

If an individual declares that he or she is registered to vote, but the individual's name does not appear on the official list of eligible voters for the polling place, or an election official asserts that the individual is not eligible to vote, then such an individual may cast a provisional ballot as follows:

1	The election official must inform the voter that he or she can cast a provisional ballot.	Implemented: State election law addressed provisional voting before HAVA became federal law. Elections Code, sections 14310 through 14313, fully address HAVA's provisional voting requirements. Further, our review of the Office's Poll Worker Training Guidelines reinforces the correct application of provisional voting.
2	The individual may cast a provisional ballot if he or she affirms in writing that he or she is a registered voter in the jurisdiction and is eligible to vote.	
3	The election official at the polling place must transmit the ballot or the voter information to an election official who can verify eligibility.	
4	If the appropriate state or local election official determines that the individual is eligible to vote, the provisional ballot shall be counted as a vote in that election.	
5	(A) At the time that an individual casts a provisional ballot, the appropriate state or local election official shall give the individual written information, which states that any individual who casts a provisional ballot will be able to ascertain under the free access system established in subparagraph (B) whether the vote was counted and, if the vote was not counted, the reason that the vote was not counted. (B) The appropriate state or local election official shall establish a free access system (such as a toll-free telephone number or an Internet Web site) that any individual who casts a provisional ballot may access to discover whether his or her vote was counted and, if the vote was not counted, the reason that the vote was not counted.	Implemented: State election law requires the Office to establish a free access system. Further, each county has implemented a free access system (either through the county Web site, by telephone, or both), which provisional voters can access to determine if their ballot was counted and if not, why not. Finally, the Office's Poll Worker Training Guidelines include instruction for poll workers on making provisional voters aware of their county's free access system.

(b)–Voting Information Requirements

1	Public posting on election day	Implemented: State law and poll worker training documents discuss the appropriate posting of materials at a polling place, which include sample ballots, voting instructions, and information on voting rights.
2	Voting information defined	Implemented: Poll worker training guidelines issued by the Office discuss displaying sample ballots, posting instructions on how to cast a provisional ballot, and displaying voter identification requirements for certain voters. We also noted that a poster titled Voter Bill of Rights includes a toll-free phone number that voters can use to allege voting rights violations.

continued on next page ...

303 - Computerized Statewide Voter Registration List Requirements

(a)–Computerized Statewide Voter Registration List Requirements

Except for certain states, each state, acting through its chief election officer, shall implement a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level that contains information for every registered voter and assigns to each a unique identification number. The database will also include the following:

1 Implementation	DESCRIPTION OF REQUIREMENT	STATUS/EXPLANATION
(i)	The computerized list must serve as the single system for storing and managing the official list of voters throughout the state.	Implemented: California regulations state that the CalVoter system is the official voter registration list for federal elections (2 CCR 20108.18(a)). CalVoter is a statewide system that is synchronized with each county's local election management system where voter registration information is initially entered. State regulations require counties to use CalVoter each business day and to update CalVoter records on the same business day that it updates its own election management systems.
(ii)	The computerized list contains the name and registration information for every legally registered voter in the state.	Implemented: Our review of the Office's documentation for the CalVoter system indicated that the system captures voter-specific information, such as name, address, and voting history.
(iii)	A unique identification number is assigned to each legally registered voter.	Implemented: Our review of the Office's documentation for the CalVoter system indicated that it assigns a unique ID for voters that lack a driver's license and could not provide a Social Security number.
(iv)	The computerized list will be coordinated with other agency databases in the state.	Implemented: Our review of documentation for CalVoter revealed that it interfaces with state departments to identify felons and death records. Further, we noted that the CalVoter system (through its CalValidator program) allows counties to verify driver's license information and Social Security number information before entering voter registration data into CalVoter.
(v)	Any election official, including local officials, may obtain immediate electronic access to the information contained in the computerized list.	Implemented: Counties have continuous access to CalVoter and are required to upload updated voter registration data frequently. Further, the Office has provided counties with CalVoter workstations so they can electronically access the CalVoter system at any time.
(vi)	All voter registration information obtained by local election officials shall be electronically entered into the computerized list on an expedited basis at the time it is provided.	Implemented: State regulations define the expectation that county election officials update CalVoter on the same business day in which it makes changes to its election management system.
(vii)	The chief election official must provide support as needed to local election officials' efforts to update voter registration information.	Implemented: The Office has developed a CalVoter data standards document that defines the data fields and file formats counties must follow when accessing the CalVoter system. Further, state regulations require the secretary of state to check and identify records that are not compliant with these standards. Also, the Office has provided CalVoter workstations to each county elections office.
(viii)	The computerized list will serve as the official voter registration list for the conduct of all federal elections.	Implemented: California regulations at 2 CCR 20108.18(a) state that CalVoter is the State's official voter registration list for federal elections.
2 Computerized list maintenance	The state or local election official will perform list maintenance on the computerized list on a regular basis as follows: (i) If an individual is to be removed, such an individual will be removed in accordance with the National Voter Registration Act of 1993 (NVRA). Individuals are removed if they have died, are felons, or have not verified their address and have not voted in two consecutive general elections for federal office. (ii) For the purposes of removing names of ineligible voters, the state shall coordinate the list with other state records regarding felony status and death.	Implemented: California regulations at 2 CCR 20108.35 and 20108.36 require county registrars to continuously submit both active and inactive voter files to CalVoter on the same day they update their local election management systems. California regulations define an inactive voter as one who has either moved out of a county's jurisdiction or has not confirmed their address with the registrar. Further, California regulations require the Office to compare, on a weekly basis, all voter registration records against state felony records and death records. If a match with a state felon or death record is found, a notice is sent to the applicable county registrar, who then verifies the information and updates the CalVoter system.

FEDERAL HELP AMERICA VOTE ACT OF 2002 (HAVA) SECTION	DESCRIPTION OF REQUIREMENT	STATUS/EXPLANATION
3	Technological security of the list The appropriate state or local official shall provide adequate technological security measures to prevent unauthorized access to the computerized list.	Implemented: According to the Office's chief of information technology, CalVoter cannot be accessed via the Internet, and data are updated only via county workstations provided by the Office. Specifically, the current CalVoter system is on a private, wide-area network that connects county election officials' workstations to the interim project and allows state personnel to access CalVoter. Certain restrictions are in place to prevent unauthorized, inappropriate access such as "permissions," "log-in ID," and "encrypted passwords."
4	Minimum standards for accuracy of state voter registration records The state election system shall ensure that voter registration records are accurate and updated regularly, including the following: (A) A reasonable effort is made to remove registrants who are ineligible to vote. Registrants who have not voted in two consecutive general elections for federal office and have not responded to a notice shall be removed from the official list of eligible voters, except that no registrant may be removed solely for failing to vote. (B) Safeguards are in place to ensure that eligible voters are not removed in error.	Implemented: The State's CalVoter system has designated fields to note both a voter's voting history and the date that an inactive voter was mailed a residency confirmation form in accordance with NVRA. State regulations require counties to update voter registration data in CalVoter on the same business day that they update their own local election management system.
5	Verification of voter registration information (A) Those registering to vote for an election for federal office must either provide a valid driver's license number or, if the applicant does not have a valid driver's license, the last four digits of his or her Social Security number. For those with neither, the state must assign a unique identification number to the voter. (B) The chief state election official and the official responsible for the state's motor vehicle agency shall utilize the databases for the state's motor vehicle agency and federal government, respectively, to match and verify driver's license numbers or partial Social Security numbers.	Implemented: The CalVoter system has a data field that records the unique identification number for every voter in the system. The number may be a driver's license number, a partial Social Security number with additional data attached, or a unique ID that is constructed based on the individual's first and last name and date of birth.
(b) Requirements for Voters Who Register by Mail		
Requirements	If an individual completes voter registration by mail and has not voted previously in a federal election in the state or in that particular jurisdiction of certain states, the voter must present either an acceptable photo identification or other document showing his or her name and address.	Implemented: If a voter completed voter registration by mail, the CalVoter system will indicate whether the voter needs to show identification before voting or has previously provided such identification.

Sources: HAVA; NVRA, as referenced by HAVA; and the California State Auditor's evaluation of documentation provided by the Office of the Secretary of State (Office).
 Note: Table C only lists certain requirements under HAVA's Title III (Title III) that, in our auditor judgment, are material requirements that must be satisfied before the Office declares the State's compliance with Title III to the federal government. Our conclusions and supporting analyses are based solely on state law, regulations, and other information provided by the Office during our audit. The State's overall compliance with HAVA depends, in part, on the 58 counties' compliance with certain HAVA elements, such as the correct application of provisional voting requirements during elections and the timely and accurate uploading of voter registration data into CalVoter. We did not review or assess the counties' actual election practices and their implications for statewide compliance with HAVA. Similarly, we did not assess the accuracy or completeness of the voter registration data that counties upload into the State's CalVoter system. Our audit was focused on the Office's implementation of HAVA.

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August 2013

**DEBRA BOWEN** | SECRETARY OF STATE | STATE OF CALIFORNIA

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July 23, 2013

Elaine M. Howle, CPA*
California State Auditor
555 Capitol Mall, Suite 300
Sacramento, CA 05814

Dear Ms. Howle:

Enclosed please find my office's response to Audit Report No. 2012-112. I appreciate the opportunity to respond to the draft report and provide my agency's perspective. As requested, this response also addresses each of the recommendations stemming from your audit.

I appreciate your staff's professionalism throughout this audit, as well as your identification of opportunities for improvements my office can implement in its administration of the federal Help America Vote Act and National Voter Registration Act.

Should you have any questions regarding this response, please contact Kim Gauthier, Deputy Secretary of State, Operations, at (916) 654-8365.

Sincerely,

A handwritten signature in cursive script that reads "Debra Bowen".

Debra Bowen
Secretary of State

DB:elg:klg:op

Secretary of State Response to California State Auditor Report 2012-112

Thank you for the opportunity to respond to the California State Auditor's Report 2012-112, which addresses the Secretary of State's implementation of the federal Help America Vote Act (HAVA) and the National Voter Registration Act (NVRA). The Secretary of State's office (SOS) is pleased the Auditor concluded the agency continues to successfully implement HAVA and has assisted the State in implementing the NVRA. The Auditor is correct: HAVA implementation is an ongoing process that began in 2003 and will continue for many years, even after the one-time federal funding is exhausted. This complex federal program, which touches on the most fundamental aspects of the electoral process from registering to vote to casting and counting ballots, has evolved in the decade since its enactment and the SOS has adapted along the way.

The SOS provides these general observations and context for the readers while addressing the Auditor's recommendations.

Voting Systems

① The Auditor correctly notes that some California counties have spent money on voting systems they can no longer fully use. However, the report fails to note that this situation exists nationwide after many states banned the widespread use of direct recording electronic (DRE) voting systems that many computer scientists proved to be vulnerable to tampering and inaccurate vote tallying.

HAVA was enacted in 2002 to address irregularities in old paper punch card voting systems and the law effectively prescribed voting system standards that promoted the use of DRE voting systems, and required those systems to be in place by January 2006. HAVA called for rapid distribution of billions of dollars to the states and establishment of a federal Election Assistance Commission (EAC). Commissioner appointments and office set-up were slow, and the EAC did not issue new voting system standards with significantly increased security requirements until December 2005 – after many jurisdictions had already purchased inferior early-model systems to meet the January 1, 2006, deadline.

Many states, including California, attempted to fill the standards void with their own security and auditing laws. As early as 2004, several agencies began sounding alarms about potentially significant problems with DRE systems. Some California county elections officials used HAVA funds to purchase the early-model DRE systems that met the low pre-HAVA security requirements, while other counties held off. State officials continued to be appropriately skeptical about DRE voting systems and in the 2006-07 California State Budget, the Legislature and the Governor included funding in the SOS HAVA Spending Plan to conduct a thorough review of the security, reliability, and accuracy of DRE and other approved voting systems.

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Secretary of State Debra Bowen acted on that legislative direction and retained leading computer security experts from the University of California and other top American universities to conduct an independent top-to-bottom review of voting systems being used in California. The lengthy technical reports published in August 2007 documented serious DRE system vulnerabilities that could be exploited to change election results; other electronic systems that optically scanned paper ballots proved to be much more reliable. Following this in-depth review, Secretary Bowen increased security and auditing requirements that limited the use of the most seriously flawed voting systems. Every county elections office still possessed optical scanning (OS) electronic voting systems, which enabled fast counting of paper ballots while maintaining all original ballots for potential recounts and audits. Ohio followed suit with its own top-to-bottom review of voting systems that resulted in findings similar to those in California. The Florida, New Mexico, Maryland, and New Jersey legislatures also mandated a return to more secure OS voting systems.

The SOS decision to restrict the use of certain vulnerable voting systems came only after detailed testing and was based entirely on scientific evidence. It is truly unfortunate that the U.S. Congress foisted poorly constructed DRE voting systems onto governments and the voting public without first establishing high security, accuracy, and reliability standards for these systems to meet. However, when we know better we must do better, and a federal failure a decade ago does not justify continuing to risk the integrity of the election process.

Statewide Voter Registration Database

California has achieved “interim compliance” with HAVA Section 303 requirements to create a statewide voter registration list by modifying an existing computerized voter database, CalVoter, and adopting state regulations that guide how CalVoter operates and how county elections officials must use it. The ability to use this modified system, while desirable, is not sustainable. Authorized in 1993, CalVoter is built on proprietary software that its vendor no longer supports, yet the vendor will not give the SOS access to the software source code in order to fix or enhance core CalVoter functions. Furthermore, the application runs on an outdated architecture for which it is increasingly difficult to obtain replacement parts and service.

Knowing the risks associated with CalVoter’s age and the inability to make any significant changes to the antiquated system, the Legislature and Governor agreed with the SOS proposal to build a new database called VoteCal that meets the HAVA Section 303 requirement. In March 2013, the SOS and a system integrator signed a contract to develop and deploy the VoteCal project.

While the Auditor does not dispute the need for VoteCal, certifying compliance with HAVA Title III could lead the SOS to violate the terms of the 2005 memorandum of agreement (MOA) that the SOS signed with the U.S. Department of Justice and could put funding for the project at risk. While certifying compliance with Title III would

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provide the Legislature and Governor with more flexibility to budget remaining HAVA money, prior California state budget forecasts have envisioned using federal HAVA funds to complete the VoteCal project and pay for the annual maintenance and operation of the project. California taxpayers could end up footing more of the bill if the Legislature and Governor spend these limited federal funds before knowing the true costs of maintaining and operating VoteCal.

Financial Reporting

- ③ The SOS has consistently provided the level of detail in the HAVA Spending Plan requested from the Legislature, Department of Finance, and other state agencies. Contrary to the Auditor's report, the SOS uses CalSTARS, the state accounting system, for all its financial reports. The HAVA Spending Plan document is a budget planning tool in a format developed with the Legislature, Legislative Analyst's Office, and Department of Finance in 2004 – an agreement memorialized in Budget Act Provisional Language that demonstrates the Legislature's desire to closely control spending authorization on a fiscal-year-to-fiscal-year basis. If there is a desire to alter this approach, the SOS will work closely with the Legislature, Legislative Analyst's Office, and Department of Finance to present information in a different format.

National Voter Registration Act

- ④ The SOS appreciates the global context the Auditor attempted to provide regarding voter registration in California. However, the Auditor fails to acknowledge Secretary Bowen's extensive NVRA outreach and training efforts have led to a 469% increase in the number of voter registrations at NVRA agencies in the last six years. For 2005-06, the total number of voter registrations generated by NVRA agencies, not including the Department of Motor Vehicles (DMV), was 20,355. For 2011-12, California's NVRA agencies generated 115,746 voter registrations. The DMV generates approximately 1.5 million voter address updates and voter registrations annually.

Auditor Recommendations and the Secretary of State's Responses

- The SOS agrees with the recommendation to "make it a priority to develop regulations describing voting system standards in accordance with state law... [and] begin the formal rule-making process by January 2014." The SOS began drafting voting system regulations in April 2013 and anticipates beginning the formal rule-making process later this year.
- ⑤ ▪ The SOS disagrees with the recommendation to "revise its record retention policy for long-term federal awards such as HAVA" because the current record retention policy meets or exceeds the federal requirements (Code of Federal Regulations, 41 CFR Part 105-71.142). Several state and federal oversight authorities have audited the SOS for HAVA administration, and every audit has indicated that the

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SOS was compliant with federal record retention requirements and the internal SOS record retention policy.

- The SOS agrees with the recommendation to contact the U.S. Department of Justice to further discuss the status of VoteCal and the current CalVoter system.
- The SOS is committed to providing as much information as possible to ensure transparency and informed decision-making. Toward that end, the SOS will continue to work closely with the Legislature, the Legislative Analyst's Office, and the Department of Finance to identify any specific areas where additional financial information would aid in the understanding of how HAVA funds are administered.
- The SOS agrees with the recommendation to work with the DMV to modify the driver license application so it may simultaneously serve as a form for voter registration. While the DMV is fully NVRA-compliant and follows specific procedures mandated in a 1995 court order, the DMV is not a department within the SOS as is typically the case in other states. That is why the court approved procedures allowing the DMV to attach a voter registration form to the driver license application.

Since the 1995 court order, the SOS has worked closely with the DMV to simplify and shorten the DMV voter registration application, ensure seamless electronic transfer of address change data, and speed the transfer of completed registration applications from the DMV to the SOS.

- The SOS agrees with the recommendation that additional agencies should be designated as voter registration agencies under the NVRA. During her tenure, Secretary Bowen has continually updated and expanded the list of NVRA agencies to ensure that every eligible Californian has the opportunity to participate in elections. Most recently, Secretary Bowen designated the California Health Benefit Exchange as a voter registration agency, making California the national leader in ensuring that people who apply for health care benefits under the federal Affordable Care Act (ACA) are also aware of their right to vote.
- The SOS agrees with the recommendation that the Legislature should define who may make NVRA designations. While the SOS does not believe express legislative authority is required, the office agrees this clarification could be helpful.

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE OFFICE OF THE SECRETARY OF STATE

To provide clarity and perspective, we are commenting on the Office of the Secretary of State's (Office) response to our audit. The numbers below correspond to the numbers we have placed in the margin of the Office's response.

As stated on page 9, the Joint Legislative Audit Committee directed us to perform an audit of the Office's efforts to fully implement the federal Help America Vote Act of 2002 (HAVA). We were not directed to, nor did we, audit the implementation of HAVA in other states. Nevertheless, as we discuss on page 14, in its September 2005 report, the federal Government Accountability Office cited concerns raised by a variety of stakeholders—including those originating from outside of California—with direct recording electronic (DRE) voting systems. We, therefore, believe our report provides the appropriate context for our findings and conclusions.

①

The Office's comment regarding the possibility of it violating the terms of the 2005 memorandum of agreement with the U.S. Department of Justice (Justice) further supports our recommendation on page 36 that the Office renegotiate this agreement. Moreover, in correspondence to our office in June 2013, the acting deputy secretary of state for operations specifically stated that the terms of the Office's agreement with Justice do not prohibit the State from declaring compliance with HAVA Title III requirements.

②

The Office's response is unclear, and seems to suggest that the Office used accounting information from the California State Accounting and Reporting System (CALSTARS) to support the actual spending amounts shown in its HAVA spending plan. As we discuss on page 30, we shared Table 6, appearing on page 29, with the Office and provided its perspective that the Office never intended for the historical expenditures shown in the HAVA spending plan to be based on its financial records in CALSTARS. We, therefore, stand by our conclusion.

③

The Office's statement suggests that we left out critical evidence in reaching our conclusions and making our recommendations. We disagree. Figure 4 on page 34 shows that overall voter registration rates throughout the State have not significantly increased over the past 10 years. Furthermore, the Office does not disagree with any of our National Voter Registration Act of 1993-related recommendations.

④

- ⑤ We disagree that the Office's current record retention policy meets or exceeds federal requirements. As we state in footnote 7 on page 15, federal regulations require that the Office keep financial and programmatic records for three years following the submittal of its final expenditure report. As we show in Table 1 on page 6, the Office has more than \$131 million in HAVA funds remaining to be spent and, as a result, has yet to submit a final expenditure report. The federal Election Assistance Commission has issued guidance informing states that the record retention period may extend several years as the initial award of funds is often spent over many years. Consequently, we stand by our recommendation for the Office to modify its record retention practices.

cc: Members of the Legislature
Office of the Lieutenant Governor
Little Hoover Commission
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press