



ELECTIONS BULLETIN

TO: Town and City Clerks

FROM: Kathy DeWolfe

RE: 2003 Elections Division Updates – Two Proposed Rules required by HAVA and First Time Voter Requirements

DATE: September 30, 2003

Each month our office will take one or two HAVA requirements and provide detailed explanations and instructions so that we can all adapt to the new laws in a smooth a manner as possible.

We have enclosed copies of two proposed rules that we have submitted for adoption. HAVA requires each state to adopt these or similar rules before January 2004. Please review these proposed rules, make them available to citizens upon request, and let us know if you have any questions or concerns.

The “**Administrative Complaint Procedure**” rule provides a process for citizens to bring complaints of alleged violations of their rights during the conduct of the election to the office of the secretary of state for resolution. We have established a simple, straightforward process beginning with a sworn written complaint. Based upon the small number of calls to our office in past elections, we do not expect many calls or complaints. Federal law requires us to establish a procedure and to mention the availability of this process in the revised “Notice to voters and warnings” that we will send you for the 2004 elections. You can refer citizens to this procedure if you are unable to resolve an issue for them at the polls.

The “**What Constitutes a Vote**” rule is basically a restatement of the language in our statute and the Election Perspectives guide for election officials to use when ballots are counted. HAVA requires that all jurisdictions using voting machines must set the machines to reject or “kick out” any ballot containing an overvote (marking more candidates than the “vote for xx” in a race) so that the election official can explain to the voter that he or she can have the ballot “spoiled” and take a new ballot to mark taking care to not vote for more than the correct number of “Vote for XX”. In towns that use the hand count paper ballot, instructions will be included in the Notice to Voters to educate voters not to overvote. We will also provide voter education materials and include an instruction on the paper ballot to remind the voter to check his or her ballot for overvotes before placing the ballot in the ballot box.

HAVA also adds some requirements for **First time voters registering individually by mail**. In Vermont, we expect this to be a very small group of citizens as most applications to vote in Vermont are submitted in person, through a voter registration drive, or through DMV or another state agency.

The new federal law requires that first time voters who register individually by mail must provide identification (valid photo identification, a copy of a current utility bill, a copy of a current bank statement or a copy of another government document that shows current name and address of the voter) before he or she can request an absentee ballot or vote in person for the first time. Most states will need to put special language on their application and send follow up letters to first time by mail applicants in order to meet this requirement.

In Vermont, the requirement to take the voter's oath and have a notary or official authorized to administer oaths certify that the applicant has taken the oath will satisfy the federal requirement for identification (assuming that the administering official follows the proper procedures).

A notary public or official authorized to administer oaths must not administer an oath unless the official already knows the person, or the person produces identification to the satisfaction of the administering official. Therefore, any first time voter who has submitted his or her application individually by mail must provide identification before you administer the oath unless the person is already known to you. This should already be your practice, and the practice of all persons authorized to administer oaths. I suggest that we remind all administering officials to require I.D. before administering the voter's oath for first time voters if the administering official does not already know the applicant.

The primary purpose of this provision in the federal law is to prevent someone from submitting an application using a fictitious name, such as a dog's name as was done in Florida. It is to prevent a fictitious person or dog from being added to the checklist, and then allowing that fictitious person or dog to receive a ballot that could be fraudulently voted and returned.

The voter's oath requirement in Vermont serves the same purpose because a person cannot receive a standard ballot either absentee or in person unless he has taken the voter's oath. In order to take the oath and have it certified, the person must either be known to the administering official or produce I.D. to the satisfaction of the official.

In summary, please remind any official that may administer the voter's oath that he must require I.D. before administering the oath if he or she does not already know the person.