

State of Wisconsin\Government Accountability Board

Post Office Box 2973
17 West Main Street, Suite 310
Madison, WI 53701-2973
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

Government Accountability Board Protocol Retroactive HAVA Checks of Voter Records

The Help America Vote Act (HAVA) of 2002 and state statutes require the State to conduct voter data comparisons with the Wisconsin Department of Transportation (DOT) and Federal Social Security Administration (SSA) -- hereafter referred to as "HAVA Checks" -- on registered electors. These HAVA Checks are facilitated by Wisconsin's Statewide Voter Registration System (SVRS).

A common misconception is that HAVA Checks are intended to confirm a voter's eligibility to vote. In reality, HAVA Checks were not designed or intended to prove or affect voter eligibility. Rather, HAVA Checks are performed for the purpose of improving the quality of voter data and to facilitate list maintenance. A voter's eligibility is determined by verifying information contained on the Wisconsin Voter Registration Application, EB-131 Form and related documents.

During the August 27, 2008, meeting of the Government Accountability Board (G.A.B.), the Board directed staff to gather statistics and facts and prepare a report analyzing the non-matches identified between August 6 and the November 4 General and Presidential Election. Based on staff's report, the Board committed to revisit the policies surrounding the HAVA Check process and determine the best course of action for Wisconsin, including whether to implement a statewide uniform procedure for improving the quality of voter data for voters preceding August 6, 2008, with the DOT and Social Security databases. On August 27, 2008, specifically, the G.A.B. ruled that county and municipal clerks and the G.A.B. staff should:

"Continue with the 'HAVA Check' procedure in effect as of August 6, 2008, through the fall election, *and correct the SVRS database later*. A mismatch with Wisconsin DOT data, in and of itself, shall not result in disqualification of a voter." (official/approved excerpted minutes from the G.A.B. August 27, 2008 Meeting).

We now have the benefit of gathering voter data from the November 4 General and Presidential Election that is still being HAVA Checked, in addition to the Circuit Court's decision upholding the Board's previous action. In accordance with the Board's August 27 decision, staff is proceeding in consultation with clerks to develop a method and guidance on how to improve data quality for voters who were registered prior to August 6, 2008.

Issues

1. On what date should retroactive HAVA Checks commence?
2. Who should conduct retroactive HAVA Checks, clerks or G.A.B. staff?

3. For quality control and consistency, what should uniform standards and procedures be applied and implemented?

What is Needed

In order to ensure consistency and quality control, a uniform process and procedure needs to be developed and applied. Standard criteria will be utilized statewide for conducting retroactive HAVA Checks on voters who registered after January 1, 2006, but before the HAVA Check process became available on August 6, 2008.

Background

HAVA requires that voters' information be compared with records at the DOT or SSA when registering to vote. The HAVA Check process became available in SVRS on August 6, 2008, and the G.A.B. ordered them to be mandatory for new voter applications as of August 23, 2008. G.A.B. is considering the most efficient and effective process and procedure to improve the quality of the data in the statewide voter database for voters who registered on or after January 1, 2006, but prior to August 6, 2008. The following background information is helpful to frame the issue and understand the dynamic factors that must be considered.

HAVA Compliance Milestones: HAVA required states to be compliant by January 1, 2004, with the option to file a waiver to be compliant by January 1, 2006. Wisconsin was granted the waiver to January 1, 2006, at which point Wisconsin was partially compliant. Approximately one third of Wisconsin's counties were using the SVRS as of that date. The remainder of the State was brought into SVRS and went "live" during the summer of 2006, resulting in all Wisconsin municipalities using the SVRS for the first election in 2006 (the September Partisan Primary). The HAVA Check process was first available in the SVRS on August 6, 2008. On August 23, 2008, the process became mandatory for all new voter applications entered into the system.

Current HAVA Check Process: HAVA Checks are currently "run" by local election officials on all new voter applications that are entered into the SVRS. The result of the check usually comes back the following day. If the result is a non-match (no match, partial match, or problem completing HAVA Check), the clerk should take the following steps:

1. Review the paper voter registration application and compare it to SVRS to determine if there is a typographical error. If so, correct the error and "rerun" the HAVA Check.
2. If no typographical error is found, send the DMV Ping Notification letter to the voter, notifying the voter that the information does not match and instructing the voter to contact the clerk to correct any data errors or inconsistencies.
3. If the voter responds to the letter, validate the relevant information in SVRS with the voter. Make any appropriate updates to the voter record in SVRS and "rerun" the HAVA Check.

If the voter confirms that all information matches SVRS and the HAVA Check still results in a non-match, the clerk should contact the G.A.B. Help Desk. Staff will investigate the reason for

failure with DOT or SSA. Non-matches can occur due to special characters such as apostrophes, hyphens, spaces in names, or variations of names. The clerk should attempt the HAVA Check on different variations of the name (i.e. Bill versus William), or with or without the hyphen, apostrophe, or space in order to resolve the non-match.

The outcome of a HAVA Check Non-match: There are several reasons a HAVA Check may result in a non-match. The most serious reason could be that a voter gave false information when registering to vote. However, the data that have been analyzed to date, show that the overwhelming reason for a non-match is that the information is incorrectly inputted into SVRS, or there are differences in a voter's name format or name variation in the three databases.

On August 27, 2008, the Board ruled that a non-match with Wisconsin DOT data, in and of itself, shall not result in the disqualification or disenfranchisement of a voter. However, the Board decided that additional information was needed before deciding what, if any, the next step may be. The Board asked staff to collect specific data regarding the HAVA Checks that were "run" from August 6, 2008 when the HAVA Check process became available, and November 4, 2008 (the date of the 2008 Presidential and General Election).

Discussion

The G.A.B. has several critical factors to consider for developing a sound and defensible policy for retroactive HAVA Checks.

1. What is the appropriate pool of voters for the retroactive HAVA Check process?

Significant considerations in this decision are:

- A. Should the Board HAVA Check all voters who were entered into the SVRS since January 1, 2006, who have not yet received a HAVA Check?
- B. Should the Board perform HAVA Checks on voters who registered after January 1, 2006, but before the SVRS went "live" in the voter's region?
- C. Can the Board rely on data that was converted into SVRS from local municipal voter registration systems to determine when those voters actually registered?

2. What is the intent and purpose of the HAVA Check Process:

The purpose of the HAVA Check process is to improve the quality of the data in SVRS by comparing the voter information in SVRS to another data source (DOT or SSA). The HAVA Check process was never intended to determine a voter's eligibility to vote. Voter eligibility is based on factors such as whether a voter has resided at their residence at least 10 days with no present intent to move; whether the voter is eighteen years of age or older; and, whether the voter is not currently serving a sentence related to a felony conviction.

Clearly the HAVA Checks do not verify any of these eligibility requirements. However, the HAVA Checks are very useful in detecting and correcting data quality issues such as typographical errors, a voter's name format, or name variation within databases that were

not designed with the intent to facilitate perfect data matches. These data “corrections” improve the quality and integrity of the voter registration list.

3. How much work should be required of local election officials related to these checks:

Due to the volume of voters that would be checked retroactively (872,014), this process could place a significant burden on local election officials. Implementing the HAVA Check process requires time-consuming steps in order to resolve a non-match. Paper registration forms for voters who registered in 2006 or 2007 may no longer be readily available to clerks if they are stored offsite. Currently, the HAVA Check process in SVRS may only be “run” one voter at a time which is tedious and painstakingly slow and time consuming.

Recommendations

G.A.B. staff makes the following recommendations regarding the retroactive HAVA Check Process:

1. In order to obtain the best quality voter data, perform the HAVA Check on voters who registered on or after January 1, 2006, but who have not yet had a HAVA Check. Include records that were converted into SVRS from local municipal voter registration systems, using the most reliable information that is available to determine when they actually registered.

Rationale: This ensures that the HAVA Check process is completed for voters for whom it is required; thereby, ensuring the best available quality of data are maintained in SVRS.

2. G.A.B. will conduct statewide HAVA Checks on voter records between January 1, 2006 and August 5, 2008. The capability is being developed in SVRS that will enable G.A.B. staff to “run” the retroactive HAVA Checks in batches/bundles.

Rationale: Having G.A.B. staff “run” HAVA Checks will ensure uniformity and consistency across-the-board, statewide. Plus, this single point of operation alleviates the need for local election officials to have to manually conduct each HAVA Check individually, one voter at a time.

3. Commence performing retroactive HAVA Checks on May 1, 2009, and complete the process by December 1, 2009 (7 months).

Rationale: Even with G.A.B. conducting the HAVA Checks in bulk, there is still a significant burden of follow-up work that local clerks may need to complete. It is not practical or feasible for clerks to perform this work while performing the election-related tasks for the February Primary and April Spring Election, as well as attend to their other clerk duties.

G.A.B.’s HAVA Check Process

1. On behalf of all municipalities, G.A.B. staff will send an appropriately worded WI DMV Ping Notification Letter to voters whose HAVA Check results in a non-match. The letter

will include return contact information for the G.A.B. (not the municipal clerk), and request the voter to contact G.A.B. within 30 days to verify their information. The G.A.B. will validate the voters' information and "rerun" the HAVA Check.

2. The G.A.B. will provide reports to clerks (both county and municipal) listing which voters were impacted by a non-match during the retroactive HAVA checks. Municipalities will be given the option to have Ping letters sent immediately after the retroactive HAVA Checks are "run", or sent 60 days after the checks are "run", giving municipalities the opportunity to clean up errors prior to having the letters sent.

Rationale for both Steps 1 and 2: This procedure helps alleviate much of the burden of follow-up work for the local clerks. Given that these voters registered as much as two years ago, it may not be practical or feasible for all municipalities to validate the data against the original voter application. The expense of sending the appropriately worded WI DMV Ping Notification Letter to all voters who result in a non-match is less than the expense in staff time required for clerks to find and pull original registration forms and validate the information.

3. The August 27, 2008, ruling of the Government Accountability Board continues in effect (Refer to G.A.B.'s August 27 ruling on page one of this Protocol)

Rationale: Many of the voters who will be affected by the retroactive HAVA Check process have been registered for several years, and most have already voted in one or more elections. Since, the HAVA Check does not determine voter eligibility, and these voters have clearly been voting, it would be inappropriate to apply any penalty against voters merely because their data in two different databases do not match.

G.A.B. must ensure that voters are not disqualified or disenfranchised simply because their name is spelled or formatted differently or varied in two different state databases. However, if a clerk suspects voter fraud as a result of the retroactive HAVA Check process, the G.A.B. staff and the District Attorney should be notified. The HAVA Check is simply an additional tool that clerks can use to compare voter data. It is not an "across the board" fraud detection tool.

Proposed Timeline and Activities

The G.A.B. proposes the following general timeline (**May 1 - December 1, 2009**) and activities for completing the retroactive HAVA Check process. Note it is anticipated that this timeline will vary. The timeframes below are intended to be general and are expected to overlap.

1. **May 1, 2009 - June 30, 2009**

G.A.B. Staff "runs" HAVA Checks.

- A. Throughout this period of time, G.A.B. staff will conduct retroactive HAVA Checks on a county-by-county basis -- in population order -- beginning in descending order, with the largest population counties. This will be done on a rolling basis as the HAVA Checks are performed.

- B. This process allows those municipalities with the greatest number of HAVA Checks the longest amount of time to follow up. Running checks by counties also makes the follow up process simpler for providers because all their municipalities will be “run” at approximately the same time.
- C. Once the HAVA Checks are “run” for a given county, reports of voters with a non-match status will be sent to both the county clerks and the appropriate municipal clerks within the respective counties.
- D. Clerks are encouraged to make a determination as soon as possible if they wish to follow up with voters through telephone contacts to attempt to correct the non-matches, or if they wish to have G.A.B. send out Ping Letters.

2. **July 1 – September 1, 2009**

During this timeframe, clerks are given the opportunity to follow-up with voters to attempt to correct the non-matches, or ask G.A.B. staff to send Ping Letters to voters.

- A. Clerks are given the opportunity to follow up with voters to attempt to correct the non-matches. If clerks wish to follow up with voters to attempt to correct the non-matches, they will have from July 1 – September 1, 2009, to do so.
- B. If clerks do not wish to conduct follow up telephone calls, they should make this decision as soon as possible, but no later than September 1, 2009. G.A.B. will then send out Ping Letters to those affected voters.
- C. Clerks who choose to follow up with voters to attempt to correct the non-matches should inform G.A.B. staff as soon as possible, but no later than September 1, 2009, of the voters who did not respond to telephone contacts.

3. **September 1- October 31, 2009**

During this timeframe, G.A.B. staff will mail Ping Letters on behalf of clerks.

- A. In an appropriately worded Ping Letter, voters will be asked to respond to G.A.B. within 30 days.
- B. G.A.B. staff will compile county-by-county reports of the outcome of the Ping letter mailing and send to both county and municipal clerks.

4. **November 1 - December 1, 2009**

During this time, G.A.B. staff will develop a report of the 2009 Retroactive HAVA Check Process, to present to the Government Accountability Board during its December 14, 2009 regular meeting.

- 5. **December 14, 2009: G.A.B. Board Meeting.** G.A.B. staff will provide a final report on the retroactive HAVA Check process to the Board at its December 14, 2009, meeting.

Communication Plan

It is critical that G.A.B. remains in close communication with local election officials throughout this retroactive HAVA Check process. Communication is intended to take place in the following ways:

1. G.A.B. staff met with the SVRS Standards Committee on November 24, 2008, to review preliminary recommendations and gather feedback for further development of uniform standards and procedures for conducting retroactive HAVA Check of voter records.
2. G.A.B. staff posted the draft protocol on the G.A.B.'s website on November 28, 2008, and sent it to county and municipal clerks for review on December 1, 2008.
3. G.A.B. staff presented an interim report to the G.A.B. at its December 17, 2008, meeting for information or consideration.
4. Between the December 17, 2008, G.A.B. meeting, G.A.B. staff continued to ask clerks to provide feedback on the proposed protocol.
5. Present the Protocol to the G.A.B. at its January 15, 2009, meeting for formal acceptance and approval. Clerks have been invited and encouraged to attend the Board's January 15, 2009, meeting.
6. Share the retroactive voter record protocol with the two major political ballot parties, state agencies (Department of Transportation and the Department of Administration's Division of Enterprise Technology), the Federal Social Security Administration, county, labor and community groups.
7. Following the January 15, 2009, G.A.B. meeting, share G.A.B.'s ruling on the retroactive voter record protocol with the Legislature, all municipalities, clerks and the general public.
8. Prepare a timeline with communication milestones based on the G.A.B. decision, keep the Legislature, municipalities, clerks and the general public duly informed before, during, and after the actual retroactive HAVA Check processing.