

CRS Report for Congress

Received through the CRS Web

Elections Reform: Overview and Issues

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Summary

The remarkable circumstances of the November 2000 Presidential election are unlikely to be repeated, but Florida's role in determining the outcome may be remembered as a turning point with respect to the nation's election system. Previously obscure details of voting and vote counting became the focus of public attention, and various state and national commissions issued reports or recommendations on changing the voting process. Some states made plans or began to replace voting equipment and adopt other improvements before the 2002 election cycle. Both sessions of the 107th Congress considered and debated federal election reform legislation, and the Help America Vote Act (HAVA, P.L. 107-252) was enacted in October 2002. The Act creates a new federal agency with election administration responsibilities, sets requirements for voting and voter-registration systems and certain other aspects of election administration, and provides federal funding; but it does not supplant state and local control over election administration. Issues for the 108th Congress include funding, establishment of the new agency, and implementation by and impacts on the states. For additional information, see the CRS Electronic Briefing Book on Election Reform. This report will be updated periodically to reflect new developments.

Voting Systems and Election Administration

After election day 2000, the media first focused attention on specific problems with punchcard voting, but broader questions soon arose about error rates, costs, counting standards, accessibility, and other issues. Elections in the United States are administered at the state and local level, and the federal government had not historically set mandatory standards for voting systems, nor had it provided funding to state and local jurisdictions for the administration of elections. HAVA changed that. While initial reactions after the election had tended to focus on technological fixes such as eliminating punchcards, some consensus emerged subsequently that the issues, and the solutions needed, are more

complex and often involve trade-offs among diverse goals. HAVA reflects those developments — it funds replacement of punchcard and lever systems but also broader improvements to election administration.

Kinds of Voting Systems. Currently, five technologies are used — paper ballots, lever machines, punchcards, optical scan, and direct recording electronic (DRE) systems. Most states use more than one kind. Each has advantages and disadvantages with respect to error rates, cost, speed, recounts, accessibility to disabled persons, and other characteristics. Differences in actual performance in elections are difficult to measure accurately and depend on many factors, such as the design and condition of the system, the familiarity of voters with it, the complexity and design of the ballot, local standards and practices, and the level of competence of pollworkers.

There is no consensus on whether any one technology is best. States have different requirements, such as whether the full ballot must be displayed on one page, whether votes are tabulated in the precincts or at a central location, whether straight-ticket voting is provided, and how accessibility requirements are to be met. Local jurisdictions also differ in how they configure and use the systems to meet local needs. Many believe that a diversity of systems is preferable because it promotes innovation and inhibits systematic fraud. Others believe that a uniform voting system, at least within each state, can be sufficiently secure, and would be more efficient and more likely to ensure that all voters have equal opportunity to cast their votes. HAVA does not require any particular voting system, but it sets requirements that will influence what systems election officials choose. Beginning in 2006, voting systems used in federal elections must provide for error correction by voters, manual auditing, accessibility, alternative languages, and federal error-rate standards. Systems must also maintain voter privacy and ballot confidentiality, and states must adopt uniform standards for what constitutes a vote on each system.

Electronic Voting Machine Controversy. The HAVA requirement for accessible voting systems (at least one per polling place) and other factors are expected to drive states toward adopting DREs. However, there is currently some controversy about how secure those systems are from tampering. Some experts believe that the problem is serious enough to require changes in the systems before they are more widely adopted, ranging from more sophisticated computer security to the printing of paper ballots that would be verified by the voter and hand-counted if the election results were contested. Others believe that procedural and other safeguards can make DREs sufficiently safe from tampering, that use of printed paper ballots would create too many problems, and that the controversy risks drawing attention away from the demonstrated utility of DREs in addressing known problems of access to and usability of voting systems.

Federal Funding. A central issue has been what role the federal government should play in addressing the concerns that have been raised about voting systems, particularly with respect to funding and standards. Estimates of funding needs for voting equipment replacement have varied, depending on goals, from about \$0.5-\$5 billion. That does not include administrative costs, voter education programs, training of pollworkers, and so forth. HAVA authorizes \$3.86 billion in funding for programs to replace equipment, improve election administration, improve accessibility, recruit pollworkers, and perform research and pilot studies. (See “Funding Under the Help America Vote Act,” below.)

New Agency. Federal activities relating to election administration have previously been performed by the Office of Election Administration (OEA) of the Federal Election Commission (FEC). Other than the voluntary voting system standards, those activities have been limited essentially to clearinghouse functions, such as publications and reports, and some administrative responsibilities under the National Voter Registration Act (P.L. 103-31). HAVA replaces the OEA with a new, independent, bipartisan federal agency, the Election Assistance Commission (EAC). The EAC is authorized for three fiscal years, beginning in 2003. Members are appointed to four-year terms and may be reappointed once. The Act also establishes two boards, with broad-based state and local membership, and a committee to address aspects of voting system standards. The main duties of the EAC include carrying out grant programs, providing for testing and certification of voting systems, studying election issues, and issuing voluntary guidelines for voting systems and the requirements in the Act. The commission will not have any new rule-making authority and will not enforce the requirements in the Act. The law provides for technical support and participation by the National Institute of Standards and Technology in relevant commission activities.

HAVA called for the appointment of commissioners within 120 days of enactment, which was February 26, 2003. In late May 2003, Democratic leaders in Congress recommended appointing Ray Martinez and Gracia Hillman to the commission, and the White House announced on June 6 that the President planned to nominate Republicans Paul DeGregorio and Deforest B. Soaries. On September 12, the White House announced the President's intention to nominate Democrats Martinez and Hillman. The Senate Rules and Administration Committee held a hearing on the nominations on October 28; Hillman and DeGregorio have been nominated for two-year terms and Soaries and Martinez for four-year terms. All nominees are eligible to be reappointed to one additional four-year term. The Senate confirmed the nominees on December 9. The Commissioners reportedly met in a private session on January 5; Commissioner Soaries will serve as Chairman.

Standards. In the 1980s, the FEC developed voluntary standards for computer-based voting systems, although not for voter registration systems. Most states have now adopted those standards, which have recently been updated. HAVA establishes federal requirements for voting systems, registration, provisional ballots, and other aspects of election administration, but leaves the methods of implementation to the states. The Act establishes two enforcement processes. The U.S. Attorney General may bring civil action with respect to the above requirements, and states, as a condition for receipt of funds, are to establish administrative grievance procedures to handle complaints from individuals.

Congressional Authority. Some observers expressed concern over Congress's authority to require states to meet election administration standards. However, the U.S. Constitution gives Congress the authority to regulate congressional elections (see CRS Report RL30747, *Congressional Authority to Standardize National Election Procedures*). Prior examples of Congress's use of that authority include, among other laws, the Voting Rights Act (see 42 USC 1973; and CRS Report 95-896, *The Voting Rights Act of 1965, As Amended: Its History and Current Issues*), which prohibits discriminatory voting practices and, and the Voting Accessibility for the Elderly and Handicapped Act, which sets some requirements for elections with respect to accessibility (see 42 USC 1973aa-1a, 6, and ee). Congress can also attach conditions to the receipt of any funding, such as for voting systems or election administration. Such conditions are included in HAVA, for example with respect to the grievance procedures described above.

Alternative Methods for Voting

State laws and practices vary considerably with respect to the many complex details of the voting process. Innovations in some states, which may now be considered more broadly, include large-scale absentee voting, early voting, and Internet voting.

Absentee Voting. Voters in many states can request an absentee ballot only for specific reasons that would prevent the voter from casting a ballot in person. But recent trends in some states, including California and Washington, allow any voter to request such a ballot, sometimes called “no fault” absentee voting. Oregon conducts its elections entirely by mail — all registered voters receive their ballots through the Postal Service. While the percentage of votes cast by absentee or mail ballot has been increasing in recent elections, some observers have expressed concerns that the method is more vulnerable to certain kinds of fraud and coercion of voters than is balloting at the polling place.

Early Voting. In some states, voters may cast a ballot in person before election day through an early voting program. There are many approaches, and the number of states using it is growing. According to the National Conference of State Legislatures, at least 26 states have some form of early voting. Some have criticized early voting as distorting to the electoral process and being open to certain kinds of fraud and abuse.

Internet Voting. Internet voting was used on a very limited basis during the 2000 election cycle. The Arizona Democratic party conducted a March 2000 primary using both the Internet and traditional polling places, and in the November 2000 election, the Defense Department conducted a small pilot program in which voters requested and submitted ballots via the Internet; the experiment is slated to be repeated in 2004. Although interest has grown, Internet voting from remote locations raises concerns about voter identification, ballot secrecy, risk of cyberattack, and access for all potential voters. It is unlikely to be widely adopted until such problems are resolved (see CRS Report RS20639, *Internet Voting: Issues and Legislation*). HAVA requires a study on this issue.

Funding Under the Help America Vote Act

HAVA establishes several grant programs (see table below for authorized amounts):

- *Election Administration Improvements.* Provides expedited, one-time formula payments for general election administration improvements to states that apply, with a \$5 million minimum combined payment per state for this and the replacement program below. Administered by General Services Administration (GSA). (Sec. 101.)
- *Replacement of Punchcard and Lever Machine Systems.* Provides expedited, one-time formula payments to replace punchcard systems and lever machines in qualifying states, with a \$5 million minimum combined payment per state for this and the improvements program above. Administered by GSA. (Sec. 102.)
- *Payments to Meet Election Requirements.* Provides annual formula payments to states to meet the Act’s requirements. Requires a 5% match and submission of a state plan. Administered by the Election Assistance Commission (EAC) created in the Act (see below). (Sec. 251-258.)

- *Payments to Assure Accessibility.* Provides payments to states to make polling places accessible to persons with disabilities. Requires application. Administered by Department of Health and Human Services (HHS). (Sec. 265-265.)
- *Payments for Protection and Advocacy Systems.* Provides payments to state protection and advocacy systems to ensure electoral participation by persons with disabilities. Requires application. Administered by HHS. (Sec. 291-292.)
- *Grants for Research and Pilot Programs.* Provides grants for research to improve voting technology (Sec. 271-273) and for pilot programs to test new voting technology (Sec. 281-283). Requires application. Administered by EAC.
- *Student Programs.* Establishes three programs, one to recruit college students as pollworkers (Sec. 501-503), one to recruit high school students (Sec. 601), and one to provide grants for the National Student and Parent Mock Election (Sec. 295-296).

Funding Authorizations in the Help America Vote Act (HAVA)

Program	Authorizations (\$millions) per Fiscal Year				
	2003	2004	2005	2006	Total
Election Administration Improvement	325.0				325.0
Punchcard/Lever Machine Replacement	325.0				325.0
Election Requirements	1,400.0	1,000.0	600.0		3,000.0
Accessibility	50.0	25.0	25.0		100.0
Protection and Advocacy	10.0	10.0	10.0	10.0	40.0+
Research	20.0				20.0
Pilot Programs	0.0				10.0
College Program	5.0	a	a	a	5.0+
High School Program	5.0	a	a	a	5.0+
Mock Election	0.2	a	a	a	0.2+
EAC	10.0	10.0	10.0		30.0
Total	2,160.2	1,045.0	645.0	10.0	3,860.2+

a: sums necessary.

+: amount shown plus sums necessary for subsequent years.

FY2003 and FY2004 Funding. The FY2003 omnibus appropriations bill (H.J.Res. 2, H.Rept. 108-10, P.L. 108-7), signed into law on February 20, includes \$1.5 billion for election reform programs authorized by HAVA, including:

- \$650 million combined for the election administration improvement and voting system replacement payments to be administered by GSA (with no specific allocation designated for either program and a maximum of \$500,000 for administrative costs),
- \$830 million for requirements grants (with a maximum of 0.1% to be paid to any territory), and

- \$20 million for other programs — \$13 million for accessibility grants, \$2 million for protection and advocacy programs, \$1.5 million each for the college and high school programs, and \$2 million for the EAC.

P.L. 108-7 also includes \$15 million for one time payments to certain states that had obtained optical scan or electronic voting systems prior to the November 2000 election.

The President's budget request for FY2004 includes \$500 million, one-half the amount authorized, to fund EAC requirements grants and administration. No funds are specifically requested for the other programs described above.

The FY2004 Transportation, Treasury, and Independent Agencies Appropriations Act, H.R. 2989, as passed by the House on September 20, 2003, includes \$495 million for grant programs authorized under HAVA and \$5 million for the EAC. The Senate version, S. 1589, reported by the Senate Appropriations Committee on September 8 (S.Rept. 108-146), provides \$500 million, of which not more than \$800,000 is to be used for EAC administrative expenses. The Senate approved H.R. 2989, as amended, on October 23; during floor consideration, an amendment was adopted that would provide \$1.5 billion altogether for HAVA grant programs. The Senate appointed conferees on October 23 and House conferees were appointed on October 29. No vote on the conference report was taken before the session ended.

The omnibus appropriations bill, H.R. 2673, includes \$1,516,200,000 for election reform, including \$1.0 billion for requirements payments, \$500 million for election reform programs, \$10 million for accessibility grants, \$5 million for protection and advocacy systems, and \$1.2 million for the EAC. The House approved the conference report to H.R. 2673 on December 8, while the Senate adjourned without acting on it. Senate action is expected in January, 2004.

Title 1 Funding Administered by GSA. The General Services Administration (GSA) disbursed all Section 101 (election administration improvements) and Section 102 (replacement of punch card and lever machine systems) funds to states in June 2003. All states and territories received payments for election administration improvements, based on a formula using each state's voting age population. Payments for the replacement of punch card and lever voting systems were made to all states that applied for the program. Total disbursements for both programs were \$649.5 million.

State Implementation of the Help America Vote Act

One result of the delay in establishing the EAC is that states cannot apply for payments to meet HAVA requirements, yet deadlines for meeting those requirements exist and some have already passed. Furthermore, the ability of states to meet the requirements without additional federal funding is hampered by budget difficulties in many states. The lack of funding and the impending deadlines create a difficult situation during a transition period when far-reaching changes to the voting process have been mandated by federal law. While the states have received some funding from GSA, the greater part of federal funding will be disbursed by the EAC. Specific information on individual state progress in meeting the requirements may be found at [<http://www.electionline.org/index.jsp>].