

# CRS Report for Congress

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## Elections Reform: Overview and Issues

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### Summary

The remarkable circumstances of the November 2000 Presidential election may be remembered as a turning point with respect to the nation's election systems. Previously obscure details of voting and vote counting have become the focus of public attention. Some states made plans or began to replace voting equipment and adopt other improvements before the 2002 election cycle. Both sessions of the 107<sup>th</sup> 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 created a new federal agency with election administration responsibilities, set requirements for voting and voter-registration systems and certain other aspects of election administration, and provided federal funding; but it did not supplant state and local control over election administration. Issues for the 108<sup>th</sup> Congress have included funding, establishment of the new agency, and implementation by and impacts on the states. Issues for the 109<sup>th</sup> Congress may well depend on the nature and extent of any problems identified in the November 2004 Presidential election, but may include funding, reauthorization of HAVA programs, and the security of voting systems. 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

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 2000 election had tended to focus on technological fixes such as eliminating punchcards, a consensus emerged subsequently that the issues, and the solutions needed, were more complex and often involved trade-

offs among diverse goals. HAVA reflects those developments — it funded 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 and preparation of officials and pollworkers.

There is no consensus on whether any one technology is best. States have different practices and requirements, such as whether the full ballot must be displayed on one page, whether votes are tabulated in precincts or centrally, whether straight-ticket voting is allowed, 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 an 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, 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 have begun to drive states to adopt DREs. However, controversy exists 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. One state, Nevada, will require DREs to provide a voter-verified paper trail for the November 2004 election. See CRS Report RL32139 and CRS Report RL32526 for discussion of these issues and proposed legislation.

**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. 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 were previously performed by the Office of Election Administration (OEA) of the Federal Election Commission (FEC). Other than the voluntary voting system standards, those activities were limited to clearinghouse functions and some administrative responsibilities under the National Voter Registration Act (P.L. 103-31). HAVA replaced the OEA with the Election Assistance Commission (EAC), an independent, bipartisan federal agency, and authorized funding for it through FY2005. Members are appointed to four-year terms and may be reappointed once. The act also established two boards, with broad-based state and local membership, and a technical committee, to address aspects of voting system standards and certification. 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 does not have any new rule-making authority and does not enforce HAVA requirements. The law provides for technical support and participation by the National Institute of Standards and Technology (NIST) in relevant commission activities.

HAVA called for the appointment of four commissioners within 120 days of enactment in October 2002. The White House forwarded nominees to the Senate October 3, 2003, and the Senate confirmed them on December 9. The commissioners met in a private session on January 5, 2004, and held their first public meeting on March 23. Subsequently, the EAC has held several additional public meetings and hearings on issues such as the security of electronic voting systems and best practices in election administration. It released a recommended set of best practices for local election administrators in August. The EAC boards and technical committee have also met, and the agency has begun distributing requirements payments (see section on funding below).

**Standards and Requirements.** 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 codifies the development and regular updating of those standards, which it calls voluntary guidelines. It also establishes federal requirements for voting systems, registration, provisional ballots, and other aspects of election administration. It leaves the methods of implementation to the states but requires the EAC to issue voluntary guidance. 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 before HAVA 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). 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), 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.

**Election Security.** Concerns about terrorist attacks have led to questions about the security of federal elections. Current federal law prohibits troops or other armed personnel under federal control from being present at polling places except “to repel armed enemies of the United States” (18 USC 592), and state laws vary concerning the role of police in securing polling places. Currently, the President does not appear to have the authority to postpone elections, for example in response to a terrorist attack, although states may do so and occasionally have in response to emergencies. Congress could potentially grant such authority to the President (see CRS Report RL32471).

## Alternative Methods for Voting

State laws and practices vary with respect to the many complex details of the voting process. Innovations in some states 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 according to the National Conference of State Legislatures (NCSL), 26 states 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 early voting is growing. According to the NCSL, 31 states have some form of it. Some observers have criticized early voting as distorting to the electoral process and being open to certain kinds of fraud and abuse. Proponents argue that early voting can increase turnout and lessen the risk of certain kinds of distortions.

**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 was slated to be repeated on a larger scale in 2004 but was cancelled, largely because of security concerns. 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). HAVA requires a study on this issue.

## Funding Under the Help America Vote Act

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

- *Election Administration Improvements.* Provided expedited, one-time formula payments for general election administration improvements to states that applied, 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.* Provided 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).

### Help America Vote Act (HAVA) Funding

Program	Authorization (\$millions) per Fiscal Year					Actual <sup>a</sup>
	2003	2004	2005	2006	Total	FY03-05
Election Administration Improvement	325.0				325.0	325.0
Punchcard/Lever Machine Replacement	325.0				325.0	325.0
Election Requirements	1,400.0	1,000.0	600.0		3,000.0	2,368.0
Accessibility	50.0	25.0	25.0		100.0	33.0
Protection and Advocacy	10.0	10.0	10.0	10.0	40.0+	12.0
Research	20.0				20.0	
Pilot Programs	0.0				10.0	
College Program	5.0	b	b	b	5.0+	2.25
High School Program	5.0	b	b	b	5.0+	2.25
Mock Election	0.2	b	b	b	0.2+	0.2
EAC	10.0	10.0	10.0		30.0	14.0
<b>Total</b>	<b>2,160.2</b>	<b>1,045.0</b>	<b>645.0</b>	<b>10.0</b>	<b>3,860.2+</b>	<b>3,082.0</b>

a: funds appropriated for FY2003 and FY2004, plus the Administration request for FY2005.

b: sums necessary.

+: amount shown plus sums necessary for subsequent years.

**Appropriations.** The **FY2003** omnibus appropriations bill (H.J.Res. 2, H.Rept. 108-10, P.L. 108-7), signed into law on February 20, 2003, contained \$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 included \$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** included \$500 million, one-half the amount authorized, to fund EAC requirements grants and administration. No funds were specifically requested for the other programs described above. The final omnibus appropriations bill, H.R. 2673, signed into law on January 23, 2004 (P.L. 108-199), contained just over \$1.5 billion 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 President's budget request for **FY2005** includes \$65 million for election reform, of which \$40 million is additional funding for requirements grants and \$10 million is for EAC administrative expenses. The request also includes \$5 million for protection and advocacy systems and \$10 million for accessibility grants. The House Transportation and Treasury Appropriations Subcommittee mark-up includes an additional \$5 million for the EAC.

**Title I 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**

With the publication of state plans in the *Federal Register* on March 24, states and territories were eligible to receive \$2.3 billion in federal requirements payments, following a 45-day public comment period and filing of a certification with the EAC. The \$2.3 billion includes funds appropriated in FY2003 and FY2004 which could not be allocated until establishment of the EAC and publication of the state plans. The GSA is disbursing the funds, as it did with Title I payments. As of August 2004, the GSA has distributed \$1.2 billion in EAC-approved requirements payments.