

CRS Report for Congress

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Elections Reform: Overview and Issues

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Summary

The remarkable circumstances of the 2000 Presidential election are quite 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 have become the focus of public attention, and various state and national commissions have issued reports or recommendations on changing the voting process. Some states have made plans or have already begun to replace voting equipment and adopt other improvements before the 2002 election cycle, while others are considering similar changes.

As Congress considers legislation to reform the voting process, a number of issues have emerged as part of the debate: the strengths and weaknesses of different types of voting systems; voting and registration problems and irregularities; problems for military and overseas voters; and the federal role in election administration. The House and Senate passed different versions of election reform legislation (H.R. 3295), and differences have been resolved in conference (H.Rept. 107-730). For additional information, see the CRS Electronic Briefing Book on Election Reform. This report will be updated periodically to reflect new developments.

Voting Systems

After election day 2000, the media focused attention on specific problems with punchcard voting. Since then, however, broader questions have arisen about error rates, costs, counting standards, accessibility, and other issues, as election officials consider upgrading current systems. Elections in the United States are administered at the state and local level, and the federal government currently does not set mandatory standards for voting systems, nor does it provide funding to state and local jurisdictions for the administration of elections; however, H.R. 3295, the Help America Vote Act of 2002,

would change that. While initial reactions to concerns raised by the November 2000 election 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 the legislation reflects those developments. However, any solutions are likely to involve trade-offs among diverse goals.

Kinds of Systems. Currently, five different technologies are in use — paper ballots, lever machines, punchcards, optical scan, and electronic systems — and 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 they depend on many factors other than the technology, such as the familiarity of voters with the equipment, the complexity and design of the ballot, local standards and practices, the condition of the equipment, and the level of competence of pollworkers. H.R. 3295 funds replacement of punchcard and lever systems.

States also have different requirements for voting systems — for example, 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. Moreover, election jurisdictions within states differ in how they configure and use the systems to meet local needs. As a result, there is no consensus on whether any particular system is best. Many believe that a diversity of systems promotes innovation and inhibits systematic fraud, and is therefore preferable. 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. H.R. 3295 does not require any particular voting system, except electronic systems for accessibility for disabled persons.

Federal Funding. A central issue for Congress is 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 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. Some have proposed federal discretionary or formula grants for upgrading current systems, or have suggested that the federal government should contribute to defraying the cost to local governments of holding federal elections. Others believe that improvements in other aspects of election administration and in voter education would be more effective than upgrading technology. Still others state that an integrated, systemic response is needed that involves all aspects of election administration. Some observers also believe that significantly higher investment in research is needed to develop better voting systems, while others state that current knowledge and levels of investment are sufficient. H.R. 3295 authorizes \$3.9 billion in funding for programs to replace equipment, improve election administration, improve accessibility, recruit pollworkers, and perform research and pilot studies.

Standards. One focus of current debate is whether a need exists for more standardization. In the 1980s, the FEC developed voluntary standards for computer-based voting systems (see [<http://www.fec.gov/elections.html>]). Most states have now adopted those standards, which are currently being updated. Some have suggested that mandatory, rather than voluntary, standards be adopted nationwide for voting systems and other

matters such as voter registration and election management. For example, standards might require that a voting system prevent or reduce overvotes or provide common procedures and standards for recounts. Others have proposed that standards be broadened but remain voluntary, or that the matter be left to state and local jurisdictions. H.R. 3295 establishes requirements for voting systems, registration, provisional ballots, and other aspects of election administration, but leaves the methods of implementation to the states.

Congressional Authority. The U.S. Constitution gives Congress the authority to regulate congressional elections (see CRS Report RL30747, *Congressional Authority to Standardize National Election Procedures*). 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*) prohibits discriminatory voting practices and, along with the Voting Accessibility for the Elderly and Handicapped Act, also sets some requirements for elections with respect to accessibility (see 42 USC 1973aa-1a, 6, and ee). Congress could also attach conditions to the receipt of any funding provided for voting systems or election administration.

Other Issues from the 2000 Election

Reports of problems in Florida and elsewhere during the 2000 election raised concerns about specific failures and the overall integrity of the election system: voting problems and irregularities; problems with ballots from military and overseas voters; the electoral college; and media projections of state outcomes before polls had closed.

Voting Problems and Irregularities. Some are concerned that the National Voter Registration Act (42 USC 1973gg et seq.), the “Motor Voter” law, may have added ineligible voters to the registration rolls. For example, there were media reports that hundreds of felons had voted in the November 2000 election, even though only a few states automatically restore voting rights for ex-offenders. There were also reports that some new motor voter registrants were unable to cast ballots on election day because their registrations could not be confirmed. And in Florida, some eligible voters reportedly were improperly purged from the voter rolls when counties checked registration lists before the election. Allegations of voter intimidation and voting irregularities prompted several investigations, including hearings in Florida by the U.S. Commission on Civil Rights, with a report issued in June 2001 (see [<http://www.usccr.gov/pubs/vote2000/main.htm>]). In March 2001, Attorney General Ashcroft announced a Justice Department voting rights initiative (the Voting Rights Section of the Civil Rights Division enforces federal voting rights statutes; see [<http://www.usdoj.gov/crt/voting>]). H.R. 3295 requires each state with voter registration to have a single, accurate, statewide registration system, and contains identification provisions for first-time voters.

Military and Overseas Voters. Members of the military and U.S. citizens who live abroad are eligible to vote absentee in federal elections under the provisions of the Uniformed and Overseas Citizens Absentee Voting Act (42 USC 1973ff-6). Controversy in Florida concerning military and overseas ballots centered on two issues — the requirement that ballots must be postmarked by election day and the deadline for counting them (10 days after the election) — neither of which is currently addressed in federal law. Because the law leaves such details to the states, postmark requirements for returning ballots vary.

The law is administered by the Secretary of Defense through the Federal Voting Assistance Program office in the Department of Defense (<http://www.fvap.ncr.gov>). After the election, the Defense Department Inspector General investigated issues with military and overseas citizens' ballots and issued a report (No. D-2001-145) in June 2001 (see <http://www.dodig.osd.mil/audit/reports/01report.htm>). H.R. 3295 addresses problems with voting by those covered by the existing federal law (see CRS Report RS20764, *The Uniformed and Overseas Citizens Absentee Voting Act: Background and Issues for the 107th Congress*). The Defense Authorization Act for FY2002 (P.L. 107-107) (S. 1438), also includes provisions concerning uniformed services voters.

Electoral College. For the first time since 1888, the winner of the popular vote in the election did not also win a majority of the electoral college vote. President Bush is the fourth President to win the Presidency despite losing the popular vote, the others being Presidents J. Q. Adams (1824), Hayes (1876), and Harrison (1888). Vice President Gore won a plurality of 537,179 in the popular vote, but Governor Bush won 5 more electoral votes (271 versus 266). Controversy in the 2000 election renewed calls to abolish or modify the electoral college (see CRS Reports RL30804, *The Electoral College: An Overview and Analysis of Reform Proposals*; and RL30844, *The Electoral College: Reform Proposals in the 107th Congress*). H.R. 3295 does not address this issue.

Uniform Poll Closing. There was renewed interest in uniform poll closing because of early and inaccurate media projections on election night in the 2000 election. Furthermore, proponents of uniform poll closing argue that projections of the winner in key states may depress voter turnout on the West Coast if it appears that the election is or will be decided before polls close in the West. Several uniform poll closing bills have been introduced. H.R. 3295 requires a study on this issue.

Alternative Methods for Registration and Voting

Because states, rather than the federal government, have administered elections since the country was founded, 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, same day voter registration, election day holidays, and Internet voting.

Absentee Voting. Voters in many states can request an absentee ballot for specific reasons only, such as illness or travel, that would prevent the voter from casting a ballot in person on election day. But recent trends in some states, including California and Washington, allow any voter to request an absentee ballot, sometimes called "no fault" absentee voting. In Oregon, elections are conducted entirely by mail. All registered voters automatically receive their ballots through the Postal Service, without needing to make a ballot request, in contrast to absentee procedures in other states (see <http://www.sos.state.or.us/executive/policy-initiatives/vbm/execvbm.htm>).

Early Voting. In some states, voters may cast a ballot in person before election day through an early voting program. There are many varied approaches, and the number of states using it is growing. According to the Elections Reform Task Force of the National Conference of State Legislatures, at least 26 states have some form of early voting (see http://www.ncsl.org/programs/press/2001/electref0801.htm#_Toc522012607).

Same Day Registration. Potential voters may register in person on election day in six states: Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming. Election day registration accommodates those who wish to participate but failed to register by the close of the registration period. In some jurisdictions, eligible voters must go to the voter registrar's office or board of elections to complete the form, while in others, they may do so at the polling place.

Election Day Holiday. According to the FEC, 12 states designate election day as a state holiday, although whether schools are closed and state employees are off varies (see [<http://www.fec.gov/pages/faqvdayprocedures.htm>]). An additional 20 states give state employees some time off to vote, and 26 states also provide for private sector employees to take time off to vote. H.R. 3295 includes a study on this issue.

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. In the November 2000 election, the Defense Department conducted a small pilot program in which voters requested and submitted absentee ballots via the Internet. Although interest has grown, Internet voting from remote locations raises concerns about voter identification, ballot secrecy, 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*). H.R. 3295 includes a study on this issue.

National and State Initiatives

After the November 2000 election, both national and state task forces and other initiatives were established to address voting issues. Recommendations for federal action were issued by ad hoc groups such as The National Commission on Federal Election Reform [<http://www.reformelections.org>], chaired by former Presidents Ford and Carter; professional associations of election officials such as the Election Center [<http://www.electioncenter.org>]; academic groups such as the Caltech/MIT Voting Project [<http://www.vote.caltech.edu>]; and others such as the Constitution Project's Election Reform Initiative [<http://www.constitutionproject.org/eri/index.htm>]. While emphases and proposals vary, there was broad agreement among most or all on several recommendations, including

- ! federal funding for technology upgrades,
- ! use of formula grants for at least some purposes,
- ! conditions for receiving federal funds,
- ! improvements in the voting system standards;
- ! expansion of data collection and dissemination,
- ! enhancement of functions now performed by the Office of Election Administration,
- ! statewide, networked voter registration systems,
- ! broader use of provisional ballots,
- ! actions to facilitate voting by military and overseas citizens,
- ! actions to ensure equal voting opportunity and accessibility,
- ! improvements in voter education,
- ! adoption by states of specific criteria for what is a valid vote, and

- ! procedures to help ensure that statutory certification and other deadlines are met.

H.R. 3295 contains provisions relating to all of those recommendations. More than a dozen states established task forces or other efforts to examine election reform needs. Reform legislation was considered in all 50 states in 2001 on a wide range of election reform issues (see [<http://www.ncsl.org/programs/legman/elect/elections.cfm>]). At least six states (California, Florida, Georgia, Indiana, Maryland, and Minnesota) enacted legislation to assist in upgrading or replacing current voting systems.

The General Accounting Office has also released several reports on different aspects of election reform (for an overview, see *Elections: A Framework for Evaluating Reform Proposals*, GAO-02-90, 15 October 2001). They include recommendations on assistance to military and overseas voters and on voting system standards, and a framework for evaluating election reform proposals.

Legislation in the 107th Congress

More than 80 bills have been introduced in the 107th Congress to make broad-reaching or more limited changes to the electoral system. Hearings were held by the Administration, Armed Services, Energy and Commerce, and Science Committees in the House, and by the Senate Committees on Commerce, Science, and Transportation; Government Affairs; and Rules and Administration. The Defense Authorization Act for FY2002 (P.L. 107-107) (S. 1438), includes provisions concerning uniformed services voters and was signed into law in December 2001.

The House version of H.R. 3295 passed (362–63) on December 12, 2001. It included a new agency and programs to buy out or improve punch card voting systems and improve the administration of elections. It also set certain minimum standards for election systems. The Senate version passed (99–1) on April 11, 2002. Based on a bipartisan substitute (S.Amdt. 2688) to S. 565, it included grant programs to replace equipment and make improvements in election administration and accessibility of polling places, a new agency, and requirements for voting systems, registration, and other aspects of the voting process. Both bills also addressed uniformed and overseas voting and established programs to recruit students as pollworkers. The conference version (H.Rept. 107-730) creates a new federal agency based largely on the House bill provisions, sets requirements similar to those in the Senate bill, and provides formula funds for equipment replacement, improvement of election administration, and meeting the requirements, and grants for improving accessibility and research and pilot programs. It also addresses issues relating to uniformed and overseas voters and establishes programs to recruit students as pollworkers. It passed the House October 10 (357–48).

President Bush's FY2003 budget request includes \$1.2 billion over 3 years in 50% matching grants to states for election improvements. The House version of H.R. 3295 provides \$2.25 billion, the Senate version, \$3.5 billion, and the conference version \$3.9 billion with a 5% match for grants to meet requirements. The FY2003 House budget resolution (H.Con.Res. 353) earmarks \$400 million, the House Treasury/Postal appropriations bill (H.R. 5120) provides \$200 million, and the Senate Commerce/Justice/State bill (S. 2778) provides \$400 million. (For more information on legislation, see the CRS Electronic Briefing Book on Election Reform).