

# 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 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 107<sup>th</sup> Congress considered and debated federal election reform legislation, and the Help America Vote Act (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 does not supplant state and local control over election administration. Issues for the 108<sup>th</sup> Congress may 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 focused attention on specific problems with punchcard voting. After that, however, broader questions arose about error rates, costs, counting standards, accessibility, and other issues, as election officials considered upgrading voting systems. Elections in the United States are administered at the state and local level, and the federal government has not historically set mandatory standards for voting systems, nor has it provide funding to state and local jurisdictions for the administration of elections. The Help America Vote Act of 2002 changes 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, the solutions 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. P.L. 107-252 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. P.L. 107-252 does not require any particular voting system. It does, however, set requirements that will influence what systems state and local election officials choose. Beginning in 2006, voting systems used in federal elections must provide for error correction by voters, manual auditing, accessibility to disabled persons (for at least one machine per precinct), alternative languages, and federal error-rate standards. Systems must also maintain voter privacy and ballot confidentiality, and states are required to adopt uniform standards for what constitutes a vote on each system.

**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. Some observers proposed federal grants for upgrading current systems, or suggested that the federal government should contribute to defraying the cost to local governments of holding federal elections. Others said that improvements in other aspects of election administration and in voter education would be more effective than upgrading technology. Still others stated that an integrated, systemic response is needed that involves all aspects of election administration. Some observers also stated that significantly higher investment in research is needed to develop better voting systems. P.L. 107-252 authorizes \$3.86 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 debate has been whether federal standards or requirements were necessary, both for voting systems and voter registration. In the 1980s, the FEC developed voluntary standards for computer-based voting systems (see [<http://www.fec.gov/elections.html>]), but not for voter registration systems. Most states have now adopted those standards, which have recently been updated. Some suggested that mandatory, rather than voluntary, standards be adopted nationwide. Others proposed that standards be broadened but remain voluntary, or that the matter be left to state and local jurisdictions. P.L. 107-252 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.

**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). In addition to 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). Some observers expressed concern that the OEA could not function effectively as part of the FEC, whose primary responsibilities are related to campaign finance. Others expressed concern that a new federal agency to provide funding and administer requirements would be cumbersome and risk usurping state and local control over elections. P.L. 107-252 replaces the OEA with a new, independent, bipartisan federal agency, the Election Assistance Commission (EAC). The EAC is authorized for three fiscal years. 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.

**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 P.L. 107-252, for example with respect to the grievance procedures described above.

## 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 were 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. 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>]). P.L. 107-252 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>]). P.L. 107-252 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 107<sup>th</sup> Congress*). The Defense Authorization Act for FY2002 (P.L. 107-107), 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 Report RL30804, *The Electoral College: An Overview and Analysis of Reform Proposals*; and CRS Report RL30844, *The*

*Electoral College: Reform Proposals in the 107<sup>th</sup> Congress*). P.L. 107-252 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. P.L. 107-252 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.

**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.

**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/faqvdayeprocedures.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. P.L. 107-252 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*). P.L. 107-252 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 (the Ford-Carter Commission); professional associations of election officials such as the Election Center; academic groups such as the Caltech/MIT Voting Project ; and others such as the Constitution Project's Election Reform Initiative. While emphases and proposals varied, there was broad agreement among most or all on several recommendations, including the following:

- 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 performed by the OEA,
- 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 ensure meeting statutory certification and other deadlines.

P.L. 107-252 contains provisions relating to all of those recommendations.

## Issues for the 108<sup>th</sup> Congress

Funding for the programs authorized in the Help America Vote Act is still uncertain. Appropriations for the programs have not yet been finalized for FY2003, as agencies continue to operate under a continuing resolution. The Senate passed an omnibus appropriations bill (H.J.Res. 2, as amended) on January 23. The bill includes \$1.55 billion for an election reform grant program but does not specify how funds should be allocated among the programs authorized in P.L. 107-252. The House has not yet considered an omnibus bill. The House version of the FY2003 Treasury/Postal appropriations bill (H.R. 5120) in the 107<sup>th</sup> Congress provided \$200 million for election reform but was passed before the Help America Vote Act was enacted. The FY2002 supplemental appropriations (P.L.107-206) provided \$400 million for election reform as part of the "contingent emergency spending" portion of the appropriation, which did not receive the required presidential approval. Funding below authorized levels may raise concerns among some observers about unfunded mandates. However, most requirements in the Act do not go into effect immediately. Because the EAC is a new agency with more complex responsibilities and structure than the OEA that it replaces, issues are likely to arise with respect to its establishment and the implementation of its programs. One question is whether time frames established in the Act will be met, especially given the delay in enacting FY2003 appropriations.