

CRS Report for Congress

Received through the CRS Web

Election Reform: The Help America Vote Act and Issues for Congress

December 2, 2004

Eric A. Fischer
Senior Specialist in Science and Technology
Resources, Science, and Industry Division

Kevin J. Coleman
Analyst in American National Government
Government and Finance Division

Election Reform: The Help America Vote Act and Issues for Congress

Summary

In November 2000, the nation faced the unusual circumstance of not knowing the winner of the election for President for several weeks. The public scrutiny resulting from that experience exposed a wide range of weaknesses with the American system of elections. Many of the weaknesses had been known for years by election administrators, but they had been unsuccessful at drawing sufficient attention to them to effect the needed changes. In October 2002, Congress enacted the Help America Vote Act (HAVA, P.L. 107-252), which addressed many of those weaknesses. It created a new federal agency, the Election Assistance Commission (EAC), with election administration responsibilities. It set requirements for voting and voter-registration systems and certain other aspects of election administration, and it provided federal funding; but it did not supplant state and local control over election administration.

The establishment of the EAC was delayed for several months beyond the statutory deadline, and it was initially funded at a fraction of the authorized level. As a result, many of the tasks assigned to it by HAVA were also delayed. The FY2005 appropriation is close to the authorization. HAVA established several grant programs for various purposes and Congress has appropriated more than \$3 billion altogether for them through FY2005, although that is about \$800 million below authorized levels. It is uncertain if current levels of funding are sufficient to meet HAVA goals and requirements. Funding for all major HAVA programs and the EAC is authorized through FY2005. Whether the 109th Congress considers modifying the authority or funding of the EAC may depend to a significant degree on the EAC's progress in achieving HAVA goals and any problems arising in meeting HAVA deadlines and preparing for the November 2006 federal election.

One of the innovations in HAVA is the establishment, for the first time, of federal requirements for several aspects of election administration: voting systems, provisional ballots, voter information, voter registration, and identification for certain voters. Most of those requirements do not go into effect until 2006, but they have begun to influence election administration. Many states have begun changing voting systems to prepare for meeting them. A controversy has arisen over the reliability and security of electronic voting, resulting in delays in replacing older voting systems in some states. The provisional ballot requirement was one of four that went into effect in 2004 and it has also been somewhat controversial. Detailed studies of these and other issues raised by the November 2004 election are likely, but they will probably take several months to perform.

Despite considerable effort by Congress to alleviate difficulties for military and overseas voters, there remain a number of hurdles to participation. Congress may consider several options for easing them. Other issues that might be considered are associated with voting systems standards, remote voting (absentee, early, and Internet), election personnel, polling places, election security, and the electoral college. This report will be updated.

Contents

New Federal Agency	2
Issues	3
Payments to States	3
Issues	4
HAVA 2004 Requirements	4
Issues	4
HAVA 2006 Requirements	5
Issues	6
Military and Overseas Voters	7
Issues	7
Voting System Standards	8
Issues	8
Absentee Ballots	8
Issues	9
Early Voting	9
Issues	9
Internet Voting	9
Issues	9
Election Personnel	10
Issues	10
The Polling Place	11
Issues	11
Election Security	11
Issues	12
Electoral College	12
Issues	12

Election Reform: The Help America Vote Act and Issues for Congress

In November 2000, the nation faced the unusual circumstance of not knowing the winner of the election for President for several weeks. The results in Florida were contested, and the contest did not end until a decision by the U.S. Supreme Court.¹ The public scrutiny resulting from that experience exposed a wide range of weaknesses with the American system of elections. Among them were poorly designed and outdated voting technology; inefficient and poorly administered registration systems; insufficient professionalism in the election workforce, especially pollworkers; problems with absentee voting; a confusing array of administrative procedures across jurisdictions; inadequate funding; problems with the processes for conducting election audits and recounts; and suspicions among many of alarming levels of voter fraud and intimidation. Although many jurisdictions suffered from few if any of these problems, they were sufficiently prevalent to cause widespread concern after the realization that they could, at least in some circumstances, have a significant impact on major elections. Many of the weaknesses had been known for years by election administrators, but they had been unsuccessful at drawing sufficient attention to them to effect the needed changes.

The situation began changing when several commissions and studies examined what had happened in Florida and made recommendations for improvements.² Both

¹ *Bush v. Gore*, 531 U.S. 98 (2000).

² Major reports included the following: Caltech/MIT Voting Technology Project, *Voting: What Is, What Could Be*, July 2001, a privately funded joint effort of the California Institute of Technology and the Massachusetts Institute of Technology involving faculty and staff from both institutions; The Constitution Project, Forum on Election Reform, *Building Consensus on Election Reform*, August 2001, from a broad-based group of organizations and experts under the auspices of a nonprofit organization focusing on legal and constitutional issues; Governor's Select Task Force on Election Procedures, Standards and Technology, *Revitalizing Democracy in Florida*, March 2001, a study commissioned by Florida Governor Jeb Bush; National Association of Secretaries of State, *Election Reform Resolution*, 6 February 2001, and *Resolution on Election Reform Policies & Federal Government*, 17 July 2001, from a professional association of state secretaries of state; National Association of State Election Directors, *Federal Election Recommendations*, 15 August 2001, from a professional association of state election directors; National Commission on Election Standards & Reform, *Report and Recommendations to Improve America's Election System*, May 2001, from the National Association of Counties, an organization representing county governments, and the National Association of County Recorders, Election Officials, and Clerks, a professional organization of county administrative officials; The National Commission on Federal Election Reform, *To Assure Pride and Confidence in the Electoral Process*, August 2001, from an independent, privately funded commission cochaired by
(continued...)

the House and the Senate held several hearings during the first session of the 107th Congress. Some states made plans or began to replace voting equipment and adopt other improvements. In December 2001, the House passed H.R. 3295, the Help America Vote Act. In early 2002, the Senate debated and passed S. 565, the Martin Luther King, Jr. Equal Protection of Voting Rights Act, after adopting 40 amendments.³ After conference negotiations, a compromise bill, the Help America Vote Act of 2002 (HAVA, P.L. 107-252) was enacted in October.⁴ 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 108th Congress included funding, establishment of the new agency, and implementation by and impacts on the states. Issues for the 109th Congress may well depend on reactions to problems identified pursuant to the November 2004 Presidential election, but may include funding, reauthorization of HAVA programs, and the security of voting systems. This report discusses how HAVA addresses those and other issues raised both in the 2000 and 2004 presidential elections, and their potential legislative implications.

New Federal Agency

HAVA established a new federal agency, the Election Assistance Commission (EAC), to replace the Office of Election Administration (OEA) of the Federal Election Commission and also to perform new functions. The EAC is an independent, bipartisan federal agency. HAVA 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.

²(...continued)

Presidents Ford and Carter; National Conference of State Legislatures, Elections Reform Task Force, *Voting in America*, August 2001, from an organization serving state lawmakers; National Task Force on Election Reform, *Election 2000: Review and Recommendations by the Nation's Elections Administrators*, August 2001, from a nonprofit organization of election administrators.

³ For details, see *Senate Consideration and Passage of H.R. 3295 (Dodd-McConnell)*, in the CRS Election Reform Briefing Book [<http://www.congress.gov/brbk/html/eberf27.html>].

⁴ For a side-by-side comparison of provisions in the three versions, see, *Comparison of Conference, Senate, and House Versions of H.R. 3295*, in the CRS Election Reform Briefing Book [<http://www.congress.gov/brbk/html/eberf24.html>].

Issues. The establishment of the EAC was delayed for more than nine months beyond the statutory deadline of February 25, 2003,⁵ and funding for the commission for FY2004 was less than one-fifth the authorized level of \$10 million. As a result, the commissioners did not hold their first public meeting until March 2004 and the EAC was significantly limited in its ability to provide assistance to states in preparation for the November 2004 election. It also had to delay beginning many of the tasks assigned to it by HAVA. It has, however, 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.⁶ The EAC boards and technical committee have also met, and the agency has been distributing payments to states (see below). In the continuing resolution, H.J.Res. 107, that provided federal funding until November 20, the EAC was permitted to expend funds at an annual rate corresponding to a fiscal year appropriation of \$7.8 million, and to expend them at a higher rate "...to reflect the agency activities associated with..." the November 2 federal election. The FY2005 omnibus appropriations bill (H.R. 4818) would provide \$14 million, with \$2.8 million to be transferred to NIST to fund its HAVA activities.⁷ Whether the 109th Congress considers modifying the authority or funding of the EAC may depend to a significant degree on progress in achieving HAVA goals and any problems arising in meeting the 2006 HAVA deadlines (see below) and in preparations for the November 2006 federal election.

Payments to States

HAVA established several grant programs for various purposes.⁸ Payments to states authorized by HAVA include \$650 million to improve election administration and to replace punchcard and lever-machine voting systems and \$3 billion over three years to meet requirements established by the act (see below). The first program was fully funded and all payments have been made. The second was funded at close to the \$2.4 billion authorized through FY2004. Other programs include \$100 million to make polling places accessible to persons with disabilities, and \$10 million per year to state protection and advocacy systems to ensure electoral participation by persons with disabilities. Those programs have been funded at substantially less than the levels authorized. HAVA also provided \$20 million in grants for research and \$10 million for pilot programs to improve voting technology, although none of those

⁵ For a listing of all HAVA deadlines, see *Help America Vote Act: Implementation Time Line*, in the CRS Election Reform Briefing Book [<http://www.congress.gov/brbk/html/eberf31.html>].

⁶ Election Assistance Commission, "Best Practices in Administration, Management and Security in Voting Systems and Provisional Voting: A Tool Kit for Election Administrators and Stakeholders," August 9, 2004, [<http://www.eac.gov/bp>].

⁷ HAVA does not include specific funding authorizations for NIST's activities in support of the EAC.

⁸ For more detail, see CRS Report RS20898, *Elections Reform: Overview and Issues*, 2 September 2004; and *Overview and Implementation of the Help America Vote Act*, in the CRS Election Reform Briefing Book [<http://www.congress.gov/brbk/html/eberf4.html>].

funds have been appropriated.⁹ Three small programs to encourage student participation in the voting and election process were established by the act, and they have been at least partially funded.

Issues. The remaining authorization for payments to help states meet the HAVA requirements — \$600 million for FY2005 — was not requested by the administration¹⁰ and the FY2005 omnibus (H.R. 4818) contains no funding for them. Two factors that may be contributing to this funding uncertainty are (1) the continuing controversy over the security and reliability of the electronic voting systems promoted by HAVA's accessibility requirements (see below) and (2) delays in the distribution of HAVA requirements payments (\$945 million in FY2003-4 funds remained to be disbursed as of October 22, 2004¹¹). Whether current levels of payments to states are sufficient to fund HAVA requirements is uncertain. Funding for all major HAVA programs and the EAC is authorized only through FY2005. Reauthorization may therefore be an issue facing the 109th Congress.

HAVA 2004 Requirements

One of the innovations in HAVA is the establishment, for the first time, of federal requirements for several aspects of election administration: voting systems, provisional ballots, voter information, voter registration, and identification for certain voters. Most of those requirements do not go into effect until 2006. However, four have already gone into effect.¹² (1) Any voter not listed as registered must be offered and permitted to cast a provisional ballot. This is a separate ballot that is set aside along with relevant information about the voter so that election officials can determine whether the person is entitled to vote. (2) Any ballots cast during a court-ordered extension of polling hours must be provisional. (3) A sample ballot and other voter information must be posted at the polling place on election day. (4) First-time voters who register by mail must provide specified identification either when submitting their registration or when voting.

Issues. The provisional ballot requirement has been somewhat controversial, although broader use of such ballots was called for by all the major reports stemming from the 2000 election controversy (see above) and was included in both the original House- and Senate-passed versions of HAVA. States vary in how this requirement is implemented, and some of those interpretations have already been subject to litigation.¹³ In some states a ballot is counted at least for some contests even if cast

⁹ Although the EAC's total FY2005 appropriation is \$4 million above the authorized level of \$10 million, all but \$800,000 of that excess is designated for other activities.

¹⁰ The administration requested \$40 million for FY2005 for requirements payments.

¹¹ Election Assistance Commission, "HAVA Title II Requirements Payments Processed by the EAC as of October 22, 2004," [<http://www.eac.gov/docs/HAVA%20Req.%20Paymts.%2010-22-04.pdf>].

¹² A fifth requirement, for statewide computerized voter registration lists, also went into effect in 2004, but most states obtained a waiver until 2006.

¹³ For a detailed discussion of state implementation and issues, see CRS Report RL32653, (continued...)

outside the voter's home precinct.¹⁴ In other states, provisional ballots are counted only if they are cast in the home precinct.¹⁵ If the policy governing provisional ballots is unclear to voters or pollworkers in a jurisdiction, a voter might be unintentionally disenfranchised, for example by inadvertently voting in the wrong precinct. Provisional ballots may be especially at issue in some close contests, where the outcome may not be known until provisional ballots are processed, which can take several days and may be subject to litigation. Congress could consider modifying this requirement to clarify its applicability to federal contests for ballots that are cast outside the home precinct. Also, provisional balloting may become less important once states have implemented the requirement for computerized registration lists (see below).

The voter-identification requirement was the subject of some controversy in the Senate debate on HAVA, causing a delay of several weeks in floor action.¹⁶ It does not, however, appear to have been particularly controversial in implementation so far. However, nineteen states have broader identification requirements, and some of these have been controversial.¹⁷

HAVA 2006 Requirements

Beginning January 1, 2006, voting systems used in federal elections must provide for error correction by voters (either directly or via voter education and instruction), manual auditing for the voting system, accessibility to disabled persons (at least one fully accessible machine per polling place) and alternative languages, and must meet federal machine error-rate standards.¹⁸ 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. Also, states using voter registration must employ computerized, statewide voter registration systems that are

¹³(...continued)

State Election Laws: Overview of Statutes Providing for Provisional Ballot Tabulation.

¹⁴ This approach can help ensure, for example, that a voter who is detained at work on election day until just before the polls close can vote at the nearest polling place rather than risk arriving at the home polling place after it has closed. It may also help a properly registered voter who inadvertently goes to the wrong polling place and is unable to obtain information from the central election office about where the correct polling place is located, for example because of busy phone lines.

¹⁵ This can help to reduce problems in counting ballots and may also reduce the risk of certain kinds of fraud.

¹⁶ See Fischer and Coleman, *Senate Consideration*.

¹⁷ See [electionline.org](http://www.electionline.org), *Election Preview 2004: What's Changed, What Hasn't and Why*, October 2004, available at [<http://www.electionline.org>].

¹⁸ For details, see *Voting Technology*, in the CRS Election Reform Briefing Book [<http://www.congress.gov/brbk/html/eberf6.html>].

accurately maintained.¹⁹ Also, beginning in 2007, all new voting systems purchased with requirements payments must be fully accessible for persons with disabilities.

Issues. Even though none of these requirements are currently in effect, they have begun to influence election administration. Many states have begun changing voting systems to prepare for meeting them. For example, both Maryland and Georgia have adopted statewide direct-recording electronic (DRE) voting systems, which meet the error-correction and accessibility requirements of HAVA and facilitate meeting the standard for what constitutes a vote. However, a separate controversy has arisen over the reliability and security of DREs, resulting in both a slowing of acquisition of those systems by states such as Ohio, and, in the case of Nevada, the adoption of a requirement for a paper ballot produced parallel to the electronic ballot and available for inspection by the voter before the ballot is cast.²⁰ While HAVA does require a paper record that can be used for manual audit of a voting system, it does not require paper ballots. In light of the controversy about DREs, some modifications to that provision were proposed in the 108th Congress.²¹

Since many states are still using voting systems such as punchcards, lever machines, and central-count optical scan, that have been shown to exhibit problems with voter error,²² such problems may continue to be of concern in close elections in such jurisdictions. However, with substantial amounts of HAVA funding remaining to be spent, most problematic voting systems might be replaced by 2006.

States that have not yet established uniform standards for what constitutes a vote on a given voting system could be involved in controversies reminiscent of those in Florida in the 2000 presidential election in the event of recounts. The decisive outcomes and margins of victory in major federal races in the November 2004 election, however, prevented recounts that might change the outcome of a federal contest. While some analyses have raised questions about the integrity of results in some cases, the consensus among most observers appears to be that any problems that might have occurred were not of a magnitude sufficient to affect the outcomes.²³

Given the unusually large number of new voters who registered in 2004 and the closely contested presidential election, some issues associated with voter registration have arisen. Among them are questions about the validity of new registrations,

¹⁹ This was a 2004 requirement that was extendable to 2006, and most states opted to delay implementation.

²⁰ See CRS Report RL32139, *Election Reform and Electronic Voting Systems (DREs): Analysis of Security Issues*.

²¹ CRS Report RL32526, *Electronic Voting Systems (DREs): Legislation in the 108th Congress*.

²² See CRS Report RL30773, *Voting Technologies in the United States: Overview and Issues for Congress*. While this report precedes the development of HAVA, it discusses issues associated with voting system performance that arose from the 2000 presidential election and formed the basis for several of the voting system requirements in the act.

²³ See, for example, the studies cited by the Caltech-MIT Voting Technology Project, available at [<http://www.vote.caltech.edu/Election2004.html>].

concerns about various kinds of fraud and abuse, and the impacts of attempts to challenge the validity of voters' registrations at polling places.

Detailed studies of these and other issues raised by the November 2004 election are likely, but they will probably take several months to perform. The utility of those studies will depend to a significant degree on the kinds and quality of the data provided by election jurisdictions. Those jurisdictions vary in what data they collect and make publicly available. While the EAC is responsible under HAVA for performing research on various aspects of election administration, it has no authority to ensure that the necessary data are provided by jurisdictions. If those data prove difficult for the EAC to obtain, Congress might wish to consider providing the agency with the authority needed to acquire them.

Military and Overseas Voters

After the 2000 election, both the Defense Authorization Act of 2002 and HAVA amended the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) to improve the voting process for members of the military, their family members, and Americans living overseas. Just before the November 2004 election, the President signed the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (P.L. 108-375), which included provisions to ease the use of the federal write-in ballot, a substitute under certain conditions for the states' regular absentee ballots.²⁴

Issues. Despite considerable effort by Congress to alleviate difficulties for military and overseas voters, there remain a number of hurdles to participation. The most prominent are timing and the reliance on military and overseas mail to receive and return registration and ballot applications and the ballots themselves. Some states permit returning voting materials by facsimile (fax), but privacy concerns have been raised about this option. The Defense Authorization Act for 2005 expanded the use of the federal write-in ballot to those in the military who are not deployed abroad but are away from their voting jurisdiction because they are on active duty. Nonetheless, delays in printing absentee ballots because of late-occurring primaries, delays in sending out ballots from the states, and delays with the mail are inherent problems. The 2004 primary and general elections demonstrated that difficulties continue, particularly when large numbers of troops are deployed, which may prompt congressional attention in the 109th Congress. There are few options to fix timing problems, but Congress could consider requiring an information campaign well in advance of the election to alleviate the glut of registration and ballot applications that typically arrive within two months of election day. And while each state was required to designate a single office to administer the law, an additional requirement for a hotline telephone number could ease difficulties for individual voters. Expanded use of the federal blank ballot without restrictions could eliminate the problem of waiting for the state absentee ballot, but would limit voting to federal offices only unless a state decided otherwise.

²⁴ See CRS Report RS20764, *The Uniformed and Overseas Citizens Absentee Voting Act: Background and Issues*.

Voting System Standards

In addition to voting system requirements, HAVA requires the EAC to develop voluntary guidelines for voting systems to replace the Federal Voluntary Voting Systems Standards (VSS) developed by the Federal Election Commission in collaboration with the National Association of State Election Directors (NASSED) and first issued in 1990. They were developed for both computer hardware and software and have been adopted in whole or in part by most states. A voluntary certification program for voting systems was also developed to verify their conformance with the VSS. HAVA gives responsibility for establishing testing and certification procedures to the EAC, with NIST playing an advisory role.²⁵

Issues. The delays and funding uncertainties experienced by the EAC have raised concerns about the timely development of the new guidelines. While HAVA stipulates that the most recent version of the VSS, last revised in 2002, will serve as the guidelines until new ones are developed, the VSS have been widely criticized with respect to their scope, approach, and effectiveness. For example, the DREs for which significant security weaknesses have been identified had been certified as conforming to the VSS.²⁶ Some observers believe that voluntary standards cannot ensure sufficient quality of voting systems, while others are concerned that mandatory standards would reduce the flexibility of state and local governments to respond to their specific needs and of manufacturers to respond to changes in the market place and to take advantage of new technological innovations. The FY2005 omnibus would provide funding specifically to support NIST's HAVA activities, and the joint explanatory statement accompanying the bill stresses the importance of standards development.²⁷

Absentee Ballots

No federal standards exist with respect to absentee ballots, although the EAC is required to conduct a study of absentee voting under HAVA. 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. Absentee ballots are perhaps the classic example of the legacy of state-by-state election administration. Eligibility, types of ballots used, deadlines for

²⁵ See *Federal Voting Systems Standards and Guidelines*, in the CRS Election Reform Briefing Book [<http://www.congress.gov/brbk/html/eberf12.html>].

²⁶ See CRS Report RL32139 and CRS Report RL32526.

²⁷ The EAC is required to report by March 2, 2005, on its FY2005 plans for research and standards activities and resources.

submission, and counting procedures and deadlines vary widely by state, and no uniform approach exists with any single element of absentee voting.

Issues. Absentee voting is on the increase and some voters reportedly cast absentee ballots in 2004 to avoid using a DRE at the polling place to cast a ballot. It is not clear whether Congress will take any action with respect to absentee ballots. If Congress does act on the issue, legislative remedies would likely focus on establishing uniform procedures for sending out absentee ballots, counting methods and deadlines, and eligibility.

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, 23 states have some form of it,²⁸ whereas 13 states offered early voting in 2000. In some states, a voter can cast a ballot at multiple locations in the jurisdiction before election day, while in other states, the voter must visit the election official's office to do so. The days and hours for voting vary as well.

Issues. Some observers have criticized early voting as distorting to the electoral process and being open to certain kinds of fraud and abuse. One disadvantage concerns late-occurring developments or issues in a campaign about which an early voter might have no knowledge. Also, because early voting is a form of remote voting, as opposed to casting a ballot at an assigned precinct, a greater possibility of committing fraud arguably exists. Proponents argue that early voting can increase turnout and lessen the risk of certain kinds of distortions. The increase in the number of states offering early voting suggests that the trend will continue, and the 109th Congress may consider legislation to require all states to establish early voting programs.

Internet Voting

A Defense Department program to allow those in the military and their family members abroad to vote over the Internet was cancelled for 2004 after a report that noted it could be prone to tampering that might affect the election outcome. The 2004 program was to be an expanded version of a pilot program in 2000 in which 84 voters cast ballots over the Internet. As many as 100,000 voters might have cast ballots under the program in 2004. Arizona's Democratic party conducted a primary in 2000 in which approximately 40% of voters cast ballots over the Internet, although computer problems and access issues emerged after the voting.²⁹

Issues. Internet voting may continue on a limited basis for certain types of elections, such as Arizona's Democratic primary in 2000, or on an experimental basis, but security concerns are paramount. Given the emergence of security issues

²⁸ In addition, seven states that do not offer early voting offer no-excuse absentee voting.

²⁹ See CRS Report RS20639, *Internet Voting*.

in voting in recent years, particularly those raised with respect to the use of DREs in polling places, enthusiasm for Internet voting has consequently declined. Efforts in the Defense Department to facilitate Internet voting are the most likely prospect for the immediate future, although the future status of that program is unknown.

Election Personnel

There are roughly 9,000 election jurisdictions in the United States, ranging in size from small rural jurisdictions with fewer than a thousand voters to large metropolitan jurisdictions with several million.³⁰ For many jurisdictions, the administration of periodic elections is unlikely to be considered as high a priority as more regular needs such as schools and roads. Funding and personnel vary, with some jurisdictions having large, well-funded operations and others very small efforts with part-time staffing.

According to the EAC, a federal election requires a total of about 2 million pollworkers nationwide.³¹ Most pollworkers are older citizens, many retired and elderly. They are usually required to work on election day from before polls open to well after they close, often a span of 14 hours or more. They are usually either unpaid or they receive only a small stipend. HAVA established two small programs to recruit college and high school students to work at the polls but has no other specific provisions regarding pollworkers.

Issues. The level of training and expertise varies substantially among election administrators, and some observers believe that election administration needs to be more strongly developed as a profession, with concomitant expectations about expertise, certification, and adherence to professional codes of conduct.³² The age and number of pollworkers is also of concern to many, especially in an election with high turnout. Many jurisdictions have apparently expressed concerns that recruiting enough pollworkers has become more difficult.³³ An insufficient workforce at the polling place, or pollworkers who are insufficiently or improperly trained, especially if they are using new equipment, may lead to errors that can create problems for voters or even impact the outcome of an election. While HAVA requires states to submit plans to the EAC that describe, among other things, their plans for education and training of election officials and pollworkers with respect to meeting HAVA requirements, it does not specify expectations or require EAC guidance for that education and training. Should Congress decide to address issues relating to election personnel, it could establish a specific program to fund training of election officials and pollworkers, or it might require the EAC to establish a program to accredit

³⁰ For example, in 2000, Petroleum County, Montana, had 443 registered voters and Los Angeles County, California had 4,075,037 (source: electionline.org).

³¹ Election Assistance Commission, "U.S. Election Assistance Commission Pushes Poll Worker Initiative," Media Advisory, 21 October 2004.

³² Some have also suggested that election officials be officially nonpartisan to avoid the appearance of conflict of interest, whereas others believe such an approach to be ineffective or unnecessary in many cases.

³³ Election Assistance Commission, "Poll Worker Initiative."

organizations that create and administer certification programs for election administrators, as it is required to do for testing laboratories (Sec. 231(b)).

The Polling Place

The Help America Vote Act requires posting voting information at each polling place; mandates disability access to voting in all polling places through the use of at least one voting device that provides the same privacy and independence as for other voters; and requires voters who have registered by mail and have not voted in the jurisdiction to provide one of a number of acceptable forms of identification (see the discussion of these requirements in *HAVA 2004 Requirements* and *HAVA 2006 Requirements* above). Jurisdictions vary in the number and kinds of polling places used for an election. HAVA provides grants to improve the accessibility of polling places but does not establish new requirements.

Issues. Provisional voting and voter identification requirements could continue to generate some controversy if state legislatures revisit these topics, insofar as HAVA left the specific details of implementation to the states. With respect to both topics, states could ease or tighten voter identification requirements generally and the procedures for the use of provisional ballots. Challenging a voter's eligibility at the polling place emerged as an issue in the 2004 election, although HAVA is silent on this issue and state laws vary considerably with respect to who may challenge and under what circumstances. In some states, no challenges may be made except by a poll worker, while in others, partisan workers may be admitted to the polling place to observe the voting and may challenge a voter's eligibility. The number, distribution, and condition of polling places has also sometimes been an issue. It could potentially be addressed by establishing requirements such as a maximum number of registered voters or a maximum geographic area covered by a polling place.

Election Security

The current security environment has raised concerns that terrorist attacks or other events might disrupt an election and even affect the outcome.³⁴ Questions have been raised about both postponement of elections and enhancement of security. The executive branch does not currently have authority to set or change the times of elections, a power reserved for Congress under the Constitution, although Congress may be able to delegate such authority. Either Congress or the states might also pass legislation in response to a terrorist attack that would change the timing of any elections that were affected. Some states have enacted statutes providing for the temporary postponement of elections. Many state statutes also grant the Governor the power to suspend certain state laws during an emergency.³⁵ Those statutes might

³⁴ For an overview, see CRS Report RL32654, *Safeguarding Federal Elections from Possible Terrorist Attack: Issues and Options for Congress*.

³⁵ For discussion of state emergency management provisions, see CRS Report RL32287, *Emergency Management and Homeland Security Statutory Authorities in the States, District of Columbia, and Insular Areas: a Summary*. This report also contains links to reports that
(continued...)

also be able to be used to postpone the general presidential election in the state during an emergency. However, actual postponement of elections has occurred in relatively few cases over the last 150 years.

It is generally the responsibility of state and local governments to provide security at polling places. A guide for state election-security planning recommends establishment of planning teams and preparation for a range of possible scenarios.³⁶ Reactions of state and local officials varied for the November 2004 election, with some making as few visible changes as possible and others increasing police presence or even moving polling places.

Issues. Whether Congress considers actions to safeguard elections may depend on events associated with future U.S. elections or those in other countries. Among the options are to take no legislative action, to explicitly delegate authority to the executive branch to the extent permitted by the Constitution, to provide mechanisms for improved coordination, and to encourage early and absentee voting. All these options have some potential benefits but also significant potential disadvantages.

Electoral College

The President and the Vice President are elected indirectly by the electoral college, according to a compromise design that balanced equal representation from each of the states against population differences. The U.S. Constitution, in Article II, Section 1, Clause 2, as amended by the 12th Amendment, together with a series of implementing federal statutes, provides the broad framework through which electors are appointed and by which they cast votes for President and Vice President.³⁷

Issues. Nearly since its inception, the electoral college has engendered calls for reform. Among the criticisms are the possibility that no candidate achieves a majority of electoral college votes, resulting in election by the House of Representatives (as occurred in 1824); the election of a President and Vice President who win a majority in the electoral college, but do not win the popular vote (as happened in 1824, 1876, 1888, and 2000); the assignment of electoral votes, said to give less populous states an advantage because a state's vote equals the number of members of the House of Representatives (based on population) and the Senate (not based on population); and a perceived advantage for ethnic voters, whereby the concentrations of such voters in large states are said to benefit because of a tendency to vote as a group for a single candidate, thus increasing their comparative influence.

³⁵(...continued)
profile provisions of each state.

³⁶ National Association of Secretaries of State and others, *Overview: Election Security Planning for States*, 24 September 2004, available at [<http://www.nass.org/Security%20Planning%20Guide.pdf>].

³⁷ For a detailed discussion of the electoral college and reform, see CRS Report RL30804, *The Electoral College: An Overview and Analysis of Reform Proposals*, and CRS Report RL32611, *The Electoral College: How It Works in Contemporary Presidential Elections*.

In recent years, heightened interest in reforming the electoral college tends to coincide with closely contested elections wherein the possibility exists that the electoral college winner does not win the popular vote. Despite the circumstances of the 2000 election which focused national attention on the electoral college vote, reform efforts after the election addressed election administration and voting issues, rather than reform of the electoral college. Reform proposals can be expected in the 109th Congress, as they are routinely introduced in nearly every Congress, but the results from the 2004 election suggest that a public mandate for changing or abolishing the electoral college has yet to emerge.