



CRS Report for Congress

Elections Reform: Overview and Issues

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Summary

Since the November 2000 Presidential election, previously obscure details of voting and vote counting have become the focus of ongoing public attention and legislative action at the state and federal levels. The Help America Vote Act (HAVA, P.L. 107-252) was enacted in October 2002, and states have made many changes to election laws and procedures before and since. HAVA created a new federal agency; set requirements for voting, voter-registration systems, and other aspects of election administration; and provided federal funding. However, it did not supplant state and local control over election administration. Issues in the 109th Congress included state compliance with HAVA requirements, voter identification and citizenship requirements for voting, funding, and paper audit trails for electronic voting systems. In the 110th Congress, the Senate Rules and Administration Committee held a hearing on the reliability of electronic voting machines on February 7, 2007. The House Administration Committee has held four hearings¹ on the issue and ordered reported an amended version of H.R. 811, the Voter Confidence and Increased Accessibility Act of 2007, on May 8. The bill would require the use of paper ballots and mandatory partial recounts in federal elections.

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-

¹ The hearings, by the Subcommittee on Elections, were held on March 15, 19, 20, and 23, 2007.

offs among diverse goals. HAVA reflects those developments — it funded replacement of punchcard and lever systems but also broader improvements in election administration.

Voting Systems. Currently, most jurisdictions use optical scan, direct recording electronic (DRE) systems, or both. There is no consensus on whether any one technology is best, although use of optical scan and DRE systems has been increasing for several years. States have different practices and requirements. HAVA does not require any particular voting system, but it sets requirements that influence what systems election officials choose. Systems used in federal elections must provide for error correction by voters, manual auditing, accessibility, alternative languages, and 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. HAVA's requirement for accessible voting systems (at least one per polling place) and other factors drove some states to adopt DREs, but controversy exists about the security of those systems. Some experts and advocates believe that the problem is serious enough to require that DREs also print 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 problems of access to and usability of voting systems. HAVA requires a paper audit trail for the voting system, but not paper ballots. However, many states have instituted paper-ballot-trail requirements.

Several bills introduced in recent congresses would address this issue. Most, including H.R. 811, would require a specific design standard for paper ballots rather than setting a performance standard that can be met in different ways, which was the approach taken by HAVA with respect to voting system requirements. Proponents of paper ballots argue that a legislated design standard is the only way to ensure that voting systems exhibit the desired level of verifiability and security. Opponents argue that such a design standard freezes technology and stifles innovation, thereby precluding the development and implementation of technologies with superior levels of verifiability and security than is possible with current technology. See CRS Report RL33190, *The Direct Recording Electronic Voting Machine (DRE) Controversy: FAQs and Misperceptions*, for further discussion of this controversy.

Federal Funding. A central issue has been the role of the federal government in addressing concerns about voting systems, particularly with respect to funding and standards. HAVA authorized \$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.)

Election Assistance Commission. Before HAVA, federal activities relating to election administration were performed by the Office of Election Administration (OEA) of the Federal Election Commission (FEC). Other than the voluntary voting system standards, OEA performed clearinghouse functions and some administrative activities under the National Voter Registration Act (P.L. 103-31). HAVA replaced the OEA with the Election Assistance Commission (EAC, [<http://www.eac.gov>]), an independent, bipartisan federal agency. 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, and it provides for technical support and participation by the National Institute of Standards and Technology (NIST, see [<http://vote.nist.gov/>]). The EAC carries out grant programs, provides for testing and certification of voting systems, studies election issues, and issues voluntary guidelines for voting systems and guidance for the requirements in the act. The EAC has no rule-making authority and does not enforce HAVA requirements. The act established two enforcement processes. The U.S. Attorney General may bring civil action with respect to HAVA requirements, and states, as a condition for receipt of funds, were required to establish administrative grievance procedures to handle complaints from individuals. The EAC's annual report to Congress for FY2006 is available at [<http://www.eac.gov/docs/EAC%20AR2006.pdf>]).

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 were updated in 2002. HAVA codifies the development and regular updating of those standards, which it calls voluntary guidelines. The EAC issued draft guidelines for public comment on June 27, 2005, and adopted the final version December 13. They go into effect in December 2007. For more information, see CRS Report RS21156, *Federal Voting Systems Standards and Guidelines: Congressional Deliberations*; and CRS Report RL33146, *Federal Voluntary Voting System Guidelines: Summary and Analysis of Issues*.

HAVA 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. See CRS Report RL32685, *Election Reform: The Help America Vote Act and Issues for Congress*.

Congressional Authority. Some observers expressed concern before HAVA over Congress's authority to require states to meet federal election standards. However, the U.S. Constitution gives Congress 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*), and the Voting Accessibility for the Elderly and Handicapped Act, (see 42 USC 1973aa-1a, 6, and ee). Congress can also attach conditions to the receipt of any funding, such as for voting systems or election administration. Such conditions are included in HAVA, for example, with respect to the grievance procedures described above.

Alternative Methods for Voting

Absentee Voting. Many states now allow any voter to request an absentee ballot, sometimes called "no fault" absentee voting, and the percentage of votes cast via absentee ballot has increased over the past several elections. Oregon conducts its elections entirely by mail. Some observers have expressed concerns that absentee voting is more vulnerable to certain kinds of fraud than is balloting at the polling place, but the trend toward increased absentee voting is expected to continue.

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, with most states now having 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. The Arizona Democratic party conducted a primary in 2000 using 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 program was to be repeated on a larger scale in 2004 but was cancelled, largely because of security concerns. Because Internet voting 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. However, some countries such as Switzerland have already adopted Internet voting on an experimental basis. 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).

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). GSA disbursed all of these 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, and payments to replace punch card and lever voting systems were made to all states that applied. Also included was \$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.

Help America Vote Act (HAVA) Funding

Program	Authorization (\$millions) per Fiscal Year					Actual FY03-06
	2003	2004	2005	2006	Total	Total
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	2,328.3
Accessibility	50.0	25.0	25.0		100.0	54.9
Protection and Advocacy	10.0	10.0	10.0	10.0	40.0+	21.7
Research	20.0				20.0	
Pilot Programs	10.0				10.0	
College Program	5.0	a	a	a	5.0+	2.4
High School Program	5.0	a	a	a	5.0+	2.2
Mock Election	0.2	a	a	a	0.2+	0.4
EAC	10.0	10.0	10.0		30.0	48.0
Total	2,160.2	1,045.0	645.0	10.0	3,860.2+	3,107.9

a: sums necessary.

+: amount shown plus sums necessary for subsequent years.

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.

For **FY2005**, the President's budget request included \$65 million for election reform, of which \$40 million was additional funding for requirements grants and \$10 million was

for EAC administrative expenses. The request also included \$5 million for protection and advocacy programs and \$10 million for accessibility grants. The omnibus appropriations bill for FY2005, H.R. 4818, was signed into law on December 8, 2004 and included \$14 million for the EAC, of which \$2.8 million was to be transferred to NIST, and \$15 million for disability voting access, with \$5 million of that amount to apply to protection and advocacy systems. Also included was \$200,000 for the student parent mock election program and \$200,000 for the Help America Vote College Program.

The President's **FY2006** budget request included \$17.6 million for the EAC (with \$2.8 million for NIST), as well as \$5 million for protection and advocacy programs and \$9.9 million for accessibility grants administered by HHS. The final appropriation (P.L. 109-115) contained \$14.2 million, including \$2.8 million for NIST, with \$13.5 and \$8.6 million, respectively, for the HHS programs, and \$250,000 "encouraged" to be spent on the Help America Vote College Program.

On February 9, the Senate approved S. 2166, which would have provided \$50 million to states to restore or replace voting equipment and materials damaged by Hurricanes Katrina or Rita. The bill was referred to the House Administration Committee on February 14. A similar amendment, for \$30 million, was attached by the Senate to H.R. 4939, the Emergency Supplemental Appropriations Act, but it did not survive conference.

The President's **FY2007** budget request included \$16.9 million for the EAC (with \$5 million for NIST), \$4.83 million for protection and advocacy programs, and \$10.89 million for accessibility grants administered by HHS. The House-passed appropriations bills included \$16.91 million for the EAC, with \$4.91 million for NIST (H.R. 5576) and \$250,000 "urged" to be expended on the college program, and the administration-requested amounts for HHS (H.R. 5647). The Senate Appropriations Committee approved H.R. 5576 on July 20, 2006, and its accompanying report (S.Rept. 109-293) included \$17 million for the EAC; the report noted that the bill required that \$4.9 million from the EAC appropriation be transferred to NIST. The 109th Congress adjourned without enacting those bills, providing instead temporary funding until February 15, 2007, via a continuing resolution (H.J.Res. 102). Continued funding through September 30 for FY2007 was subsequently provided via another continuing resolution, H.J.Res. 20, which was signed by the President on February 15 (P.L. 110-5). It provided \$16.24 million for the EAC, of which \$4.95 million was for NIST, \$4.83 million for protection and advocacy programs, and \$10.89 million for disability access.

The President's **FY2008** budget request includes \$15.5 million for the EAC (with \$3.25 million for NIST), as well as \$4.83 million for protection and advocacy programs and \$10.89 million for accessibility grants administered by HHS.

State Implementation of the Help America Vote Act

With the publication of state plans in the *Federal Register* on March 24, 2004, 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 \$2.32 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 EAC distributed all of that funding to states by December 2005; no additional funding for requirements payments has been appropriated.