



The Help America Vote Act and Elections Reform: Overview and Issues

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Summary

The November 2000 presidential election made previously obscure details of election administration the focus of state and federal legislative action. The Help America Vote Act (HAVA, P.L. 107-252) was enacted in 2002, and states have made additional changes to election laws and procedures since then. HAVA created the Election Assistance Commission (EAC), set requirements for various aspects of election administration, and provided federal funding. The law did not supplant state and local control over election administration, but several election reform issues have arisen or persisted subsequently. HAVA promoted the use of electronic voting systems to facilitate voting by persons with disabilities, but those systems raised concerns about security and reliability that led many states to enact laws requiring voter-verifiable paper ballot records. Support for the EAC has eroded among some observers, who have criticized it for being too obtrusive, or for being slow, ineffectual, or even unnecessary. HAVA's voter-identification provisions did not resolve the controversy over whether more stringent requirements are needed to prevent voter fraud, or whether such requirements are more likely to disenfranchise legitimate voters than prevent fraud. Similarly, while HAVA's voter-registration requirement may have improved that process, some have argued for more automated systems. Concerns about inadvertent disenfranchisement of military and overseas voters led to legislation to correct those problems. Finally, the Obama Administration and others have argued that no additional federal funds should be expended to assist states in meeting HAVA requirements because large sums previously appropriated remain unexpended.

Altogether, more than \$3.5 billion of federal funds has been appropriated through FY2010 under various HAVA authorities: about \$3.3 billion in election reform payments to states; \$130 million for the EAC and various programs it administers; and another \$130 million in accessibility payments to states, administered by the Department of Health and Human Services. For FY2011, the President's budget request included \$16.8 million for the EAC but no funding for election reform payments to the states. The Senate Appropriations Committee (S.Rept. 111-238) and the House Financial Services and General Government Appropriations Subcommittee recommended similar amounts. However, the EAC has been operating at FY2010 funding levels since September 30, 2010, under a series of continuing resolutions. For FY2012, the Administration requested \$13.7 million for the EAC, with no funding for election reform payments.

Numerous bills to amend HAVA have been considered in Congress. One has been enacted that made a minor change to the law. The 111th Congress enacted a new military and overseas citizens voting law that was signed into law in October 2009 as part of the defense authorization act (P.L. 111-84). The House passed H.R. 512, which would prohibit a state's chief election official from actively participating in a federal election campaign, unless the official or an immediate family member was the candidate. The bill died in the Senate. A number of election reform bills were reported in the House as well. The reported bills would have established universal absentee voting (H.R. 1604), provided grants for voluntary absentee ballot tracking (H.R. 2510), and made improvements to military voting procedures (H.R. 2393).

In the 112th Congress, the Subcommittee on Elections of the Committee on House Administration held a hearing on April 14, 2011, on H.R. 672 (Harper), which would amend HAVA to eliminate the EAC and transfer its functions to the Federal Election Commission and the National Institute of Standards and Technology. On May 25, 2011, the full committee approved an amendment in the nature of a substitute to the bill, offered by Representative Harper, and passed it. As amended, the bill would transfer essential functions to the FEC only, rather than to the FEC and NIST.

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The Help America Vote Act

Even before the 2000 presidential election had been resolved by the U.S. Supreme Court in December of that year, more than a dozen bills to reform the election process had been introduced in the Congress. Legislative activity continued when the 107th Congress convened the following month, along with the release of various independent reports and studies on election reform. In December 2001, the House passed H.R. 3295, the Help America Vote Act. The Senate passed S. 565, the Martin Luther King, Jr. Equal Protection of Voting Rights Act, in early 2002, after adopting 40 amendments. Following conference negotiations, the compromise bill, the Help America Vote Act of 2002 (HAVA, P.L. 107-252) was enacted in October.

HAVA imposed a number of requirements on the states with respect to election administration, provided payments to the states to meet the new requirements, created a new independent agency, made changes to improve military and overseas voting, and authorized other election reform activities. Among its major provisions, HAVA did the following:

- created the Election Assistance Commission (EAC), an independent, bipartisan agency to carry out grant programs, provide for testing and certification of voting systems, study election issues, and assist election officials by issuing guidelines and other guidance for voting systems and implementation of the act's requirements;
- established a number of payment and grant programs to
 - help states meet the law's requirements,
 - replace punchcard and lever voting machines and make general election improvements,
 - promote accessibility in the electoral process,
 - promote student participation, and
 - support research and pilot programs;
- established requirements in the states to
 - provide a provisional ballot to a voter who is not on the registration list or whose registration is in question;
 - post a sample ballot and voter information at polling places on election day;
 - impose an identification standard for first-time voters who register by mail;
 - provide for voter error correction on voting systems used in federal elections;
 - provide for manual auditing of the voting system, alternative-language accessibility, and at least one machine per voting place that can provide disability access, and
 - create and maintain a computerized, verified statewide voter registration list,
- required the EAC to develop voting system guidelines for computer hardware and software for voluntarily use by the states, and voluntary guidance to assist states in meeting HAVA requirements;
- left methods of implementation to the states and prohibited rulemaking by the EAC, leaving enforcement to the U.S. Attorney General while requiring states to establish grievance procedures; and

- amended the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to make improvements to voting procedures for members of the military and overseas citizens.

Although many bills have been introduced to amend HAVA since it became law, only a minor change has been enacted. The National Defense Authorization Act for 2010 made numerous amendments to UOCAVA and also amended HAVA to authorize appropriations to achieve compliance on the new military and overseas voting requirements. In general, local election officials (LEOs) support HAVA and its provisions, although some, such as the provisional ballot requirement, have been controversial. For more information about the views of LEOs, see CRS Report R41667, *How Local Election Officials View Election Reform: Results of Three National Surveys*, by Eric A. Fischer and Kevin J. Coleman.

Voting Systems and Election Administration

While initial reactions after the 2000 election had tended to focus on technological fixes such as eliminating punchcards, a consensus emerged subsequently that the issues, and the solutions needed, were more complex and often involved trade-offs among diverse goals. HAVA reflects those developments—it funded replacement of punchcard and lever systems but also broader improvements in election administration.

Voting Systems

Currently, most jurisdictions use one of two kinds of voting system:

- *optical scan*, in which voters mark choices on paper ballots by hand or machine and the ballots are read by an electronic counting device, or
- *direct recording electronic (DRE) systems*, in which voters mark choices via a computer interface and the voting machine records them directly to an electronic memory.

There is no consensus on whether any one technology is best. Use of optical scan and DRE systems increased after the enactment of HAVA, and these systems are now used by 90% of voters. 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.

In September 2009, ES&S, considered by many to be the largest voting-system vendor in the United States, announced that it had acquired Premier Election Solutions, considered the second largest. This acquisition raised concerns among some other vendors, election officials, and activists. A particular concern was whether the larger market share the acquisition gave ES&S would create a monopolistic environment in the voting-system industry. The merger announcement prompted a lawsuit by competitor Hart Intercivic against ES&S and Diebold, Incorporated, Premier's parent company, on antitrust grounds, and led to an investigation and lawsuit by the U.S. Department of Justice. The case was settled in March 2010 with an agreement

by ES&S to divest specified assets acquired from Premier. In May 2010, Dominion Voting Systems acquired those assets, and one month later, it also acquired Sequoia Voting Systems, which had been the third largest U.S. vendor.

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 all voting systems produce paper ballots that can be verified by voters and that will serve as the official record of the votes for any recount. Others believe that 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 have addressed this issue. Most would have required 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.¹

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. The amount appropriated by Congress thus far is \$3.54 billion. However, a substantial proportion of the payments to states reportedly remains unexpended, and as a result, the two most recent Administration budget requests have not included any additional funding for that program. Similarly, the FY2012 request does not include any funding for accessibility payments (see "Voting by Members of the Uniformed Services and Overseas Voters").

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

¹ See CRS Report RL33190, *The Direct Recording Electronic Voting Machine (DRE) Controversy: FAQs and Misperceptions*.

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. The statute also 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 (except for limited authority under the National Voter Registration Act of 1993, the “motor-voter” law) 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.

At the time HAVA was being debated in Congress, there was some dispute about whether it should be a permanent agency. Some supporters contended that a permanent agency was necessary to ensure the fairness and integrity of federal elections, whereas opponents were concerned about a permanent federal role in what was historically a responsibility of state and local governments. The outcome of the debate was that HAVA authorized appropriations for the EAC for FY2003 through FY2005, but did not contain a sunset provision for the agency. It has not been reauthorized but has been funded in each fiscal year since FY2005. At least one bill was previously introduced to make the EAC a permanent agency (H.R. 550, 109th Congress), while two bills in the 112th Congress would eliminate the EAC (H.R. 235 and H.R. 672). The Committee on House Administration ordered H.R. 672 to be reported, as amended, on May 25, 2011. (See the “Legislative Action” section of this report.)

Standards and Requirements

In the 1980s, the FEC developed voluntary standards for computer-based voting 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 in June 2005. The final version took effect in December 2007. A new, completely rewritten draft version was first released for public review in October 2007.² However, it has yet to be adopted.

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.³

Voter Identification

The Help America Vote Act requires that certain voters who had registered by mail present a form of identification from a list specified in the act. States vary greatly in what identification they require voters to present, ranging from nothing beyond the federal requirement to photographic identification for all voters. A number of states enacted laws in recent years to require photo ID to

² 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*.

³ See CRS Report RL32685, *Election Reform: The Help America Vote Act and Issues for Congress*.

vote, which resulted in a series of state court challenges and rulings. In the 109th Congress, the House passed legislation to require photo identification and proof of citizenship when voting in federal elections, but no further action followed. The U.S. Supreme Court has upheld an Indiana statute requiring photo identification for voting.⁴

Voter Registration

With the passage of HAVA, Congress attempted to address voter registration problems by requiring computerization and integration of voter registration systems and placing primary responsibility at the state level of government. That requirement went into effect in January 2006. The absence of a clear national standard for the HAVA-required statewide systems has led to uncertainties about how states should develop them and even whether states will be able to meet the requirements. Given the problems some states have had, the increase in new-voter registration in recent elections, and recent closely contested presidential elections, issues associated with voter registration systems have become more prominent. Among them are questions about the integrity and accuracy of the new statewide systems, the validity of new registrations, concerns about various kinds of fraud and abuse, and the impacts of attempts to challenge the validity of voters' registrations at polling places.

Voting by Members of the Uniformed Services and Overseas Voters

Members of the uniformed services and U.S. citizens who live abroad are eligible to register and vote absentee in federal elections under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, P.L. 99-410) of 1986. The law is administered by the Secretary of Defense, who delegates that responsibility to the director of the Federal Voting Assistance Program at the Department of Defense (DOD). The law was amended following the 2000 Presidential election because of controversy surrounding ballots received in Florida from uniformed services and overseas voters. Both the National Defense Authorization Act for FY2002 (P.L. 107-107) and the Help America Vote Act (P.L. 107-252) included various provisions concerning uniformed services and overseas voting. Minor revisions to the law were made again in 2005 and 2007. In the 111th Congress, a major overhaul of UOCAVA was approved when the President signed the National Defense Authorization Act for FY2010 (P.L. 111-84) on October 28. It included an amendment (S.Amdt. 1764) that contained the provisions of S. 1415, the Military and Overseas Voter Empowerment Act. Most of the provisions of the MOVE Act were in effect for the 2010 election.⁵

Funding Under the Help America Vote Act

States and territories were eligible to receive \$2.3 billion in federal requirements payments under HAVA, once each jurisdiction had published a "state plan" in the *Federal Register*, followed by a

⁴ See CRS Report RS22882, *The Constitutionality of Requiring Photo Identification for Voting: An Analysis of Crawford v. Marion County Election Board*, by L. Paige Whitaker.

⁵ See CRS Report RS20764, *The Uniformed and Overseas Citizens Absentee Voting Act: Overview and Issues*, by Kevin J. Coleman.

45-day public comment period and the filing of a certification with the EAC. The state plans were published on March 24, 2004. The \$2.3 billion included 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 was appropriated until FY2008, when \$115 million was appropriated. An additional \$100 million was appropriated for FY2009. Payments have been distributed to states and territories to meet the new HAVA requirements and can be used for general election administration improvements once the requirements have been met.

HAVA established the following payment and grant programs (see **Table 1** below for authorized and appropriated 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 (see next paragraph). 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, summarized 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. (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 payments (with a maximum of 0.1% to be paid to any territory), and \$20 million for other programs—\$13 million for accessibility payments, \$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 a \$15 million appropriation to GSA for one-time payments to certain states that had obtained optical scan or electronic voting systems prior to the November 2000 election.

The President's budget request for FY2004 included \$500 million, one-half the amount authorized, to fund EAC requirements payments 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 payments, \$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 payments and \$10 million was for EAC administrative expenses. The request also included \$5 million for protection and advocacy programs and \$10 million for accessibility payments. 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 (of which \$2.8 million is for NIST), as well as \$5 million for protection and advocacy programs and \$9.9 million for accessibility payments 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.

The FY2007 request included \$16.9 million for the EAC (\$5 million for NIST), \$4.83 million for protection and advocacy programs, and \$10.89 million for accessibility payments administered by HHS. The 109th Congress adjourned without enacting an appropriations measure, 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 FY2008 request included \$15.5 million for the EAC (\$3.25 million for NIST), and \$4.83 million for protection and advocacy programs and \$10.89 million for accessibility payments administered by HHS. From the start of FY2008 until December 31, 2007, continued funding for the EAC was provided by a series of continuing resolutions. Ultimately, FY2008 funding was provided by the Consolidated Appropriations Act for 2008, enacted on December 16, 2007 (P.L. 110-161). It provided \$16.53 million for the EAC, of which \$3.25 million is for NIST, and

\$200,000 is for the student and parent mock election program. It also provided \$115 million for requirements payments, \$10 million for data collection grants to selected states, \$4.83 million for protection and advocacy programs, and \$12.37 million for disability access.

The FY2009 request included \$16.68 million for the EAC (with \$4 million for NIST), as well as \$5.26 million for protection and advocacy programs and \$12.15 million for accessibility payments administered by HHS. The FY2009 appropriations were provided initially in a continuing resolution (P.L. 110-329), which provided the same funding levels as FY2008, and then in an omnibus bill (P.L. 111-8) that was passed on March 11, 2009. The omnibus provided \$18 million for the EAC, with \$4 million of that to be transferred to NIST, \$750,000 for the College Program, and \$300,000 for the high school mock election program. It also provided funding for requirements payments to the states in the amount of \$100 million, with an additional \$5 million for grants for research on voting technology improvements and \$1 million for a pilot program for grants to states and localities to test voting systems before and after elections. Finally, the omnibus provided \$12.2 million for disability access and \$5.3 million for protection and advocacy programs.

Table 1. Help America Vote Act (HAVA) Funding
(\$ millions)

Budget Item	HAVA Auth. ^a	Appropriations								
		2003	2004	2005	2006	2007	2008	2009	2010	Total
Payments to States										
Election Administration Improvement	325									
		650 ^b								650
Punchcard/Lever Machine Replacement	325									
HAVA Requirements	3,000	830	1,498				115	100	70	2,613
One-Time Payment ^c		15								15
Total Payments ^d	3,650	1,495	1,498				115	100	70	3,278
Election Assistance Commission (EAC)										
General ^e	30.00	2.00	2.00	10.71	11.29	11.29	23.08 ^f	14.00	13.41	87.77
NIST				2.78	2.77	4.95	3.25	4.00	3.50	21.25
College Program	5.00 ^g	1.50	0.75	0.20	0.00 ^h			0.80	0.75	4.00
High School Program	5.00 ^g	1.50	0.75							2.25
Mock Election	0.20 ^g		0.20	0.20			0.20	0.30	0.30	1.20
Research	20.00							5.00	3.00	5.00
Pilot Programs	10.00							1.00	2.00	1.00
Total EAC	70.20	5.00	3.70	13.88	14.06	16.24	26.53	25.10	22.96	127.47
Health and Human Services (HHS)										
Accessibility	100.00	13.00	10.00	10.00	10.90	10.90	12.40	12.20	12.15	91.55
Protection and Advocacy	40.00 ^g	2.00	5.00	4.96	4.83	4.83	5.35	5.30	5.26	37.52
Total HHS	140.00	15.00	15.00	14.96	15.73	15.73	17.75	17.50	17.41	129.08

Budget Item	HAVA Auth. ^a	Appropriations								Total
		2003	2004	2005	2006	2007	2008	2009	2010	
Total HAVA	3,860	1,515	1,517	29	30	32	159	143	110	3,535

Source: CRS, from HAVA and relevant appropriations acts.

Notes: All figures are in millions of current (nominal) dollars of budget authority as authorized or appropriated and are rounded where necessary. Figures for FY2005 and FY2006 include rescissions.

- a. Authorization amounts in HAVA.
- b. Appropriated amount did not specify the distribution of funds between the two budget items.
- c. For payments to states that had obtained optical scan or DRE voting systems prior to the November 2000 election. The funds were appropriated in the General Government and Appropriations Act of 2003, whereas payments to states authorized under HAVA were appropriated in the Miscellaneous Appropriations Act of 2003; both acts were included as divisions of the FY2003 omnibus appropriations act, P.L. 108-7.
- d. The total payment appropriated includes the one-time payment in FY2003 and is therefore \$15 million greater than the total appropriated from funds authorized by HAVA. See note c.
- e. Figures in this row are funds remaining in EAC line items after amounts for other specific items (such as NIST) are subtracted.
- f. This includes \$10 million for grants of \$2 million each to five states to improve the collection of election data.
- g. Listed amounts plus sums necessary for subsequent years beyond the initial authorization period.
- h. Congress appropriated no funds for this in FY2006 but “encouraged” the EAC to spend \$250,000 on it.

For FY2010, the President’s budget request included \$16.5 million for the Election Assistance Commission (EAC) and \$106 million for election reform payments to states, with \$5.26 million for protection and advocacy programs and \$12.15 million for accessibility payments administered by HHS, as in FY2009. The House and Senate bills (H.R. 3170, S. 1432) would have provided about the same amount for the EAC. The House bill would have provided nearly the same amount for election payments, while the Senate bill called for \$52 million in election payments. The Consolidated Appropriations Act, 2010 (P.L. 111-117) that was signed into law on December 16, 2009, includes \$18.0 million for the EAC, of which \$3.5 million is to be transferred to NIST, \$750,000 is for the Help America Vote College Program, and \$300,000 is for a competitive grant program to support student and parent mock elections. It also includes \$75 million for election reform programs, with \$70 million of that amount for requirements payments, \$3 million for research grants to improve voting technology with respect to disability access, and \$2 million for grants to states and localities for voting system logic and accuracy testing. Also, the omnibus provided \$12.15 million for disability access and \$5.26 million for protection and advocacy programs.

For FY2011, the President’s budget request included \$16.8 million for the EAC, of which \$3.25 million is to be transferred to NIST. It also included \$5.26 million for protection and advocacy programs and \$12.15 million for accessibility payments administered by HHS. It included EAC “election reform grants” among programs to be terminated, and therefore provided no funding for requirements payments, research and pilot program grants, the college program, and mock elections. As justification, it pointed out that about \$1 billion in EAC payments to states remained unspent, and claimed that states had accrued \$763 million in interest on previously appropriated payments. The EAC, in contrast, listed accrued interest through 2008 as totaling \$279 million. The cause of this discrepancy is not clear. Funding for federal agencies, including the EAC, was

provided at FY2010 levels according to a series of seven continuing resolutions between September 30, 2010, and April 15, 2011. On that date, a continuing resolution was enacted to fund the federal government for the rest of the fiscal year. H.R. 1473, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, provides \$16.3 million for the EAC, of which \$3.25 million is to be transferred to NIST. It provides no new funding for election reform programs.

For FY2012, the President's budget request includes \$13.7 million for the EAC, of which \$3.25 million is to be transferred to NIST, resulting in a 23% reduction in operating funds for the EAC from the FY2011 request and a 28% reduction from the FY2010 appropriation. The budget request also includes no funding for the HAVA-authorized protection and advocacy programs and accessibility payments administered by HHS.

Legislative Action

Two bills have been introduced to eliminate the EAC, originally established under the Help America Vote Act. The EAC was authorized for FY2003-FY2005. H.R. 235 (Representative Kevin Brady) would terminate the EAC and its authority to make requirements payments to the states and would rescind unobligated requirements payments. No amounts could be expended after enactment, except to terminate ongoing projects and activities that use requirements payments or those necessary to terminate commission activities and projects. H.R. 672 (Harper) would terminate the EAC, would transfer to the National Institute of Standards and Technology the functions for voting system testing and certification, and would transfer various other functions of the agency to the Federal Election Commission. (An amendment to eliminate the EAC was offered, but not adopted, in the 111th Congress: (S.Amdt. 4764) to the Airport and Airway Extension Act of 2010, Part III (H.R. 4853)).

The Committee on House Administration held a hearing on MOVE Act implementation on February 15, 2011, and the Subcommittee on Elections held hearings on what went right and wrong in the 2010 election (on March 31) and on H.R. 672, which would eliminate the Election Assistance Commission (on April 14). The full Committee marked up the bill on May 25, when it approved an amendment in the nature of a substitute, and passed the bill on a voice vote. The bill as amended would retain some of the responsibilities of the EAC that were established in HAVA, transferring them to the FEC. The FEC would acquire responsibility for the voluntary voting system guidelines, testing and certification of voting systems, and functions that had been transferred by HAVA from the FEC to the EAC, as well as specified functions relating to military and overseas voters.

In the 111th Congress, the House passed a bill that would have prohibited certain electoral activity by each state's chief election administration official. H.R. 512 was passed on September 29, 2010, and would have prohibited such officials from actively taking part in a federal political campaign unless the official or an immediate family member was the candidate. In addition, a new military and overseas citizens voting law was enacted in October 2009. The new law originated in the Senate as S. 1415, which was reported with amendments by the Senate Rules Committee in July 2009. It was passed in October 2009 as an amendment to the National Defense Authorization Act of 2010 (P.L. 111-84), and it amends the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA; P.L. 99-410) to allow for electronic and mail transmission of voting materials, requires that states send out absentee ballots at least 45 days before an election, requires collection and delivery of overseas military ballots, and requires other improvements. In

other legislative action, the House Administration Committee reported three bills, H.R. 1604 and H.R. 2510, both sponsored by Representative Susan Davis, and H.R. 2393, sponsored by Representative Kevin McCarthy. H.R. 1604 would have extended no-excuse absentee voting by mail (a voter does not need to provide an excuse to vote absentee) to all states and H.R. 2510 would have reimbursed states for the cost of establishing a voluntary, absentee ballot tracking program. H.R. 2393 would have required the Secretary of Defense to collect absentee ballots from overseas military voters for express delivery (a similar provision was enacted in P.L. 111-84) and made other improvements to UOCAVA.

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