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

Eric A. Fischer, Resources, Science, and Industry Division; and Kevin J. Coleman, Government and Finance Division

June 17, 2008

Abstract. In addition to funding, issues for the 110th Congress include voter-verifiable paper audit trails and possibly photo identification, poll worker training, and prohibiting deceptive practices. 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.

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

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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, although the agency has since been more successful at fulfilling its statutory tasks. HAVA established several grant and payment programs for various purposes, and Congress has appropriated more than \$3 billion altogether for them. It is uncertain if current levels of funding are sufficient to meet HAVA goals and 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. Those requirements are now in effect. Many states have changed voting systems to meet them. Controversy has arisen over the reliability and security of electronic voting, leading many states to adopt requirements for paper ballots. The provisional ballot requirement was one of four that went into effect in 2004, and it was also somewhat controversial. There is also still some question about implementation of computerized statewide voter-registration lists in some states.

In addition to funding, issues for the 110th Congress include voter-verifiable paper audit trails and possibly photo identification, poll worker training, and prohibiting deceptive practices. 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.

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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 improvements.

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

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 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 a side-by-side comparison of provisions in those two versions, see CRS Report RL31417, *Election Reform Legislation: Comparison of House and Senate Versions of H.R. 3295*, by Eric A. Fischer.

identified pursuant to the November 2004 Presidential election, as well as implementation by states of HAVA requirements, response to Hurricanes Katrina and Rita, and the security of voting systems.⁴ In addition to funding, issues for the 110th Congress have included those that arose in the 2006 election, as well as voter-verified paper audit trail requirements for electronic voting machines, photo identification, poll worker training, and prohibiting deceptive practices. 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 in the 110th or 111th Congress are associated with voting systems standards, remote voting (absentee, early, and Internet), election personnel, polling places, election security, and the electoral college.

This report discusses how HAVA addresses those and other issues, and their potential legislative implications.

Election Assistance Commission

HAVA established a new federal agency, the Election Assistance Commission (EAC, <http://www.eac.gov>), to replace the Office of Election Administration (OEA) of the Federal Election Commission (FEC) and also to perform new functions. The EAC is an independent, bipartisan federal agency. HAVA authorized funding for it only through FY2005, but the agency has continued to be funded at or above authorized levels.⁵ 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, see <http://vote.nist.gov>) in relevant commission activities, including the technical committee.

Issues

The initial establishment of the EAC was delayed for more than nine months beyond the statutory deadline of February 25, 2003, 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 subsequently, however, been staffed more fully and has engaged in major activities under its HAVA mandate. Among them are a recommended set of best practices for local election administrators released in August 2004,⁶ release of the

⁴ In addition, a new national commission was formed, chaired by former President Jimmy Carter and former Secretary of State James Baker, with a report planned for fall 2005 (see <http://www.american.edu/ia/cfer/>). The Election Center also created a new task force and released its report in May 2005 (National Task Force on Election Reform, *Election 2004: Review and Recommendations by the Nation's Election Administrators*, The Election Center, May 2005, available at <http://www.electioncenter.org/documents/Task%20Force%20Final%20PDF.pdf>).

⁵ For funding details, see RS20898, *Elections Reform: Overview and Issues*, by Kevin J. Coleman and Eric A. Fischer.

⁶ Election Assistance Commission, "Best Practices in Administration, Management and Security in Voting Systems and (continued...)"

federal *Voluntary Voting System Guidelines* in December 2005⁷ with a revision in review in 2008, and completion of the distribution of payments to states (see below).

Payments to States

HAVA established several grant programs for various purposes.⁸ Payments to states authorized by HAVA included \$650 million under Title I to improve election administration and to replace punchcard and lever-machine voting systems and \$3 billion over three years under Title II 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, but no additional funding was appropriated since then until FY2008, when Congress provided an additional \$115 million. Other programs provide funding through the Department of Health and Human Services to make polling places accessible to persons with disabilities, and for state protection and advocacy systems to ensure electoral participation by persons with disabilities. HAVA also provided \$20 million in grants for research and \$10 million for pilot programs to improve voting technology, although neither of those programs have been specifically funded. Three small programs to encourage student participation in the voting and election process were established by the act, and they have received some funding.

Issues

The remaining authorization for payments to help states meet the HAVA requirements may continue to be an issue, especially given the concerns of election officials about HAVA's impact on the costs of elections.⁹ Whether the levels of payments provided to states are sufficient to fund HAVA requirements is uncertain. Also contributing to this funding uncertainty is the continuing controversy over the security and reliability of the electronic voting systems promoted by HAVA's accessibility requirements (see below). Funding for all major programs was authorized by HAVA only through FY2005; however, Congress has continued to provide funding in subsequent fiscal years.

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 went into effect in January 2006. However, four went into effect earlier:¹⁰ (1) Any voter not listed

(...continued)

Provisional Voting: A Tool Kit for Election Administrators and Stakeholders," August 9, 2004 <http://www.eac.gov/bp>.

⁷ See CRS Report RL33146, *Federal Voluntary Voting System Guidelines: Summary and Analysis of Issues*, by Eric A. Fischer.

⁸ For more detail, see CRS Report RS20898, *Elections Reform: Overview and Issues*, by Kevin J. Coleman and Eric A. Fischer.

⁹ See, for example, CRS Report RL34363, *Election Reform and Local Election Officials: Results of Two National Surveys*, by Eric A. Fischer.

¹⁰ A fifth requirement, for statewide computerized voter registration lists, also went into effect in 2004, but most states (continued...)

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. Also, the seven states that received title I payments to replace lever machines or punchcard voting systems and did not request a waiver were required to replace all those systems statewide in time for the November 2004 federal election.

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 been subject to litigation.¹¹ In some states a ballot is counted at least for some contests even if cast outside the voter's home precinct.¹² In other states, provisional ballots are counted only if they are cast in the home precinct.¹³ 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 as states continue to implement and gain experience with the statewide computerized registration lists that HAVA requires (see below).

The voter-identification requirement was the subject of some controversy in the 2002 Senate debate on HAVA, causing a delay of several weeks in floor action. It does not, however, appear to have been particularly controversial in implementation so far. However, many states have broader identification requirements, and some of those have been controversial.¹⁴ Some questions have been raised about photographic identification requirements in particular. However, the U.S. Supreme Court has ruled that such voter-identification requirements are permissible.¹⁵

(...continued)

obtained a waiver until 2006.

¹¹ For a detailed discussion of state implementation and issues, see CRS Report RL32653, *State Election Laws: Overview of Statutes Providing for Provisional Ballot Tabulation*, by L. Paige Whitaker and Arthur Traldi.

¹² 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.

¹³ This can help to reduce problems in counting ballots and may also reduce the risk of certain kinds of fraud.

¹⁴ See, for example, CRS Report RS22505, *Voter Identification and Citizenship Requirements: Overview and Issues*, by Kevin J. Coleman and Eric A. Fischer.

¹⁵ 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.

HAVA 2006 Requirements

Beginning January 1, 2006, voting systems used in federal elections were required to 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 needed to meet federal machine error-rate standards. Systems were also required to maintain voter privacy and ballot confidentiality, and states were required to adopt uniform standards for what constitutes a vote on each system. While HAVA does require a paper record that can be used for manual audit of a voting system, it does not require paper ballots.

Also, states using voter registration needed to employ computerized, statewide voter registration systems that are accurately maintained.¹⁶ The 23 states that received title I payments to replace lever machines and punchcard systems and that requested a waiver of the 2004 deadline were required to replace those systems statewide before the first election for federal office in 2006. Finally, beginning in 2007, all new voting systems purchased with Title II requirements payments were required to be fully accessible for persons with disabilities.

Issues

Many states began changing voting systems well before the HAVA requirements went into effect. For example, both Maryland and Georgia 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,¹⁷ resulting in the adoption of a requirement for paper ballots in many states. In the case of DREs, paper ballots can be produced parallel to the electronic ballot and are available for inspection by the voter before the ballot is cast. This approach is called a voter-verified paper audit trail, or VVPAT. Alternatively, states may adopt a paper-based optical-scan voting system.

Starting in the 108th Congress, bills have been introduced that would require the use of paper ballots in federal elections. Whether Congress will enact such a requirement remains uncertain.

Meanwhile, The EAC's technical committee, in the 2007 draft of the *Voluntary Voting System Guidelines*, or VVSG (discussed below) has proposed that certified voting systems be required to provide a means of auditing the vote that is independent of the software used by the voting system.¹⁸ The proposal is consistent with HAVA's use of performance rather than design standards in its voting system provisions (§301(a)). While paper ballots would meet this proposed requirement, it also permits the development of new systems that could provide levels of verifiability, security, and accessibility that are not possible with paper ballots. A specific design standard such as that contained in most of the introduced bills would preclude the use of such

¹⁶ This was a 2004 requirement that was extendable to 2006, and most states opted to delay implementation.

¹⁷

For in-depth discussion of the issues, see CRS Report RL33190, *The Direct Recording Electronic Voting Machine (DRE) Controversy: FAQs and Misperceptions*, by Eric A. Fischer and Kevin J. Coleman, and CRS Report RL32139, *Election Reform and Electronic Voting Systems (DREs): Analysis of Security Issues*, by Eric A. Fischer.

¹⁸ Available at <http://www.eac.gov>.

new systems and therefore most likely impede their development. However, such a specific design standard is arguably easier to implement and enforce than a performance standard.

Some states have had difficulty replacing voting equipment to meet HAVA requirements or to meet the conditions of title I HAVA payments they received to replace equipment.¹⁹ Problems may also arise in other states that are changing voting systems, given the logistical complexities of the changeover in some cases.²⁰

Most states waived the 2004 HAVA deadline for developing computerized statewide voter-registration lists and were therefore required to implement the new systems by January 2006. At least 11 states missed that deadline, although most claimed that they would be compliant before the first election of 2006.²¹ In addition, the absence of a clear national standard for the lists has led to uncertainties about implementation.²² Given the increase in new-voter registration in recent elections and recent closely contested presidential elections, some other issues have also arisen. Among them are questions about 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.

Making informed decisions about the above and other issues depends in part on the availability of accurate and comparable information from jurisdictions. However, state and local 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.²³ For FY2008, Congress provided the EAC with \$10 million for grants to states to improve data collection.

¹⁹ The U.S. Department of Justice sued the state of New York in early 2006 for failing to meet two HAVA requirements: provision of at least one fully accessible voting machine per polling place, and a computerized statewide voter-registration list (Department of Justice, "Justice Department Sues New York State Over Voting Rights," Press Release, March 1, 2006, http://www.usdoj.gov/opa/pr/2006/March/06_crt_108.html). New York also received title I payments to replace lever machines. The EAC has issued an advisory in which it "concludes that lever voting systems have significant barriers which make compliance with Section 301(a) [of HAVA] difficult and unlikely" (Election Assistance Commission, "EAC Advisory 2005-005: Lever Voting Machines and HAVA Section 301(a)," September 8, 2005, <http://www.eac.gov/docs/EAC%20Advisory%2005-005.pdf>). That raises questions about the compliance with HAVA requirements in those few states where lever machines are still in use. The states affected by hurricanes Katrina and Rita also struggled with meeting HAVA requirements.

²⁰ For example, problems with new voting equipment and pollworker training led to significant delays in reporting the results of the March 2006 primary in the Chicago area (see, for example, John McCormick, "Voting-machine maker on defense," *Chicago Tribune*, April 27, 2006, p. 10).

²¹ National Association of Secretaries of State, "NASS Survey Summary: The States and HAVA's Deadlines," December 21, 2005.

²² See, for example, Justin Levitt, Wendy R. Weiser, and Ana Muñoz, "Making the List: Database Matching and Verification Processes for Voter Registration," Brennan Center for Justice at New York University School of Law, March 2006, http://www.brennancenter.org/dynamic/subpages/download_file_35559.pdf; electionline.org, *Assorted Rolls: Statewide Voter Registration Databases Under HAVA*, June 2005, available at <http://www.electionline.org>.

²³ The EAC began performing an election-day survey of election jurisdictions with the 2004 election. The resulting reports are informative but illustrate the kinds of problems arising from a lack of uniform reporting (the reports are available at <http://www.eac.gov>).

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 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 were not deployed abroad but were 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 reportedly continued with primary and general elections in 2004. Problems continued in the 2006 elections as the EAC reported that only 33% of ballots requested by military and overseas voters were counted in the election, with 70% having been returned to election officials as undeliverable.²⁵

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. Improvement in this area might be expected following the October 2007 launch of the Overseas Vote Foundation's website to assist UOCAVA voters with registration and ballot requests.²⁶ And while each state was required to designate a single office to administer the law, an additional requirement for a hotline telephone number in each state could ease difficulties for individual voters. The Federal Voting Assistance Program provides both domestic and overseas toll-free numbers. 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.

Voting System Standards

In addition to voting system requirements, HAVA required the EAC to develop the *Voluntary Voting System Guidelines (VVSG)* to replace the *Voluntary Voting Systems Standards (VSS)*

²⁴ See CRS Report RS20764, *The Uniformed and Overseas Citizens Absentee Voting Act: Background and Issues*, coordinated by Kevin J. Coleman.

²⁵ The EAC report may be found at <http://www.eac.gov/clearinghouse/completed-research-and-reports/uniformed-and-overseas-citizen-absentee-voting-act-studies>.

²⁶ The OVF website may be found at <https://www.overseasvotefoundation.org/>.

developed under the auspices of the FEC and first issued in 1990.²⁷ They apply to both computer hardware and software and have been adopted in whole or in part by most states. An updated version of the *VSS* was released in 2002. The EAC released the first version of the *VVSG* in December 2005.²⁸ Developed in cooperation with NIST, those guidelines are only a partial revision of the *VSS*, with new or revised sections on security, human factors, conformance, and certain testing procedures. They went into effect in December 2007. A more thorough revision is in progress.²⁹

A voluntary certification program for voting systems was also developed by the National Association of State Election Directors (NASED) to verify conformance with the *VSS*. HAVA gives responsibility for establishing testing and certification procedures to the EAC, with NIST playing an advisory role and developing a laboratory accreditation program.³⁰ The EAC has accredited some laboratories for testing and certification of voting systems under the *VVSG*.

HAVA does not authorize specific funding for NIST support activities, but Congress has provided appropriations for those activities as part of the EAC funding.

Issues

The delays and funding uncertainties experienced by the EAC were apparently a factor in the decision to revise only parts of the *VSS* for the first version of the *VVSG*. While HAVA stipulated that the most recent version of the *VSS*, last revised in 2002, would serve as the guidelines until the *VVSG* went into effect, 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*.³¹ The *VVSG* have been criticized on the one hand as placing an undue burden on manufacturers to comply with the two-year implementation window, and on the other as being insufficiently comprehensive, revising only part of the *VSS*. The provisions in the 2007 revision of the *VVSG* relating to security concerns about DREs, and its extensive revision to conform more closely to international standards and address other concerns with the earlier version, have also generated some controversy. In addition, there have been calls for increased openness and other changes to the certification process.

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

²⁷ See CRS Report RS21156, *Federal Voting Systems Standards and Guidelines: Congressional Deliberations*, by Eric A. Fischer; CRS Report RL33146, *Federal Voluntary Voting System Guidelines: Summary and Analysis of Issues*, by Eric A. Fischer; and CRS Report RS22363, *Federal Voluntary Voting System Guidelines: Issues*, by Eric A. Fischer.

²⁸ The *VVSG* are available at <http://www.eac.gov>.

²⁹ For more information, see the NIST HAVA website at <http://vote.nist.gov>.

³⁰ Jeffrey Horlick, *Voting System Testing*, NIST Handbook 150-22, December 2005, <http://ts.nist.gov/ts/htdocs/210/214/docs/NIST-HB-150-22-2005.pdf>.

³¹ See CRS Report RL32139, *Election Reform and Electronic Voting Systems (DREs): Analysis of Security Issues*, by Eric A. Fischer, and CRS Report RL32526, *Electronic Voting Systems (DREs): Legislation in the 108th Congress*, by Eric A. Fischer and Kevin J. Coleman.

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 in 2004 allowed 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 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, although the House Administration Committee reported H.R. 281, the Universal Right to Vote by Mail Act of 2007 on April 14, 2008. The bill establish universal absentee voting by mail in all states and prohibit a state from counting an absentee ballot unless it matched the ballot envelope signature with the voter’s signature on file. Other legislative remedies that could be introduced include establishing uniform procedures for sending out absentee ballots, counting methods, and deadlines.

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 had some form of it in 2004,³² 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. If the 110th Congress takes up the issue, it may consider legislation to require all states to establish early voting programs or to require that voter rolls at polling places indicate which voters have cast ballots before election day.

³² In addition, seven states that do not offer early voting offer no-excuse absentee voting.

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.³³

While little progress has been made in the development of Internet voting for public elections in the United States, other countries have begun implementing this method. The most prominent example is Switzerland, which has used Internet voting experimentally for several years.³⁴ Different cantons use different approaches, with Neuchâtel using an "end-to-end" system³⁵ that provides true voter verifiability, which is not possible with paper ballot systems.

Issues

Internet voting may continue on a limited basis for certain types of elections in the United States, such as Arizona's Democratic primary in 2000, or on an experimental basis, but security concerns are paramount. Given the emergence of security issues in voting in recent years, particularly those raised with respect to the use of DREs, enthusiasm for Internet voting has consequently declined in the United States. Efforts in the Defense Department to facilitate Internet voting are the most likely prospect for the immediate future.

Election Personnel

There are roughly 10,000 election jurisdictions in the United States,³⁶ ranging in size from small rural jurisdictions with fewer than a thousand voters to large metropolitan jurisdictions with several million.³⁷ 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. The demographic profile of local election officials is unusual, especially for a professional group of government employees.³⁸

³³ See CRS Report RS20639, *Internet Voting*, by Kevin J. Coleman.

³⁴ L'Etat de Genève, "E-Voting," <http://www.ge.ch/evoting/english/welcome.asp>, n.d.

³⁵ See VVSG, Volume 1, Appendix C; and Scytl, "Secure Electronic Voting," http://www.scytl.com/eng/pnyx_government_pdf.htm, n.d.

³⁶ The number varies depending on how the count is made. While counties are the local election jurisdiction in most states, some, especially several states in New England and the Upper Midwest, use townships or other small jurisdictions. Those states account for about two-thirds of the total number of jurisdictions.

³⁷ For example, in 2000, Petroleum County, Montana, had 443 registered voters and Los Angeles County, California had 4,075,037 (source: electionline.org).

³⁸ See CRS Report RL34363, *Election Reform and Local Election Officials: Results of Two National Surveys*, by Eric A. Fischer.

According to the EAC, a federal election requires a total of about 2 million pollworkers nationwide.³⁹ Most pollworkers are older citizens, many retired and elderly, although no reliable demographic information is available on them nationwide. 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.⁴⁰ The reported age and number of pollworkers is also of concern to many, especially in elections with high turnout, and given the increased complexity of and role of technology in elections in the wake of HAVA. Many jurisdictions have apparently expressed concerns that recruiting enough pollworkers has become more difficult.⁴¹ 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. HAVA requires states receiving Title II requirements payments 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 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. Some jurisdictions are experimenting with the use of vote centers, where any registered voter in the county can vote, instead of traditional precinct polling places.⁴² HAVA provides grants to improve the accessibility of polling places but does not establish new requirements.

³⁹ Election Assistance Commission, "U.S. Election Assistance Commission Pushes Poll Worker Initiative," Media Advisory, October 21, 2004.

⁴⁰ 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.

⁴¹ Election Assistance Commission, "Poll Worker Initiative."

⁴² See Larimer County, Colorado, "Elections," http://www.co.larimer.co.us/elections/votecenters_tab.htm, for example.

Issues

Provisional voting and voter-identification requirements have generated some controversy and could continue to do so as state legislatures revisit these topics, insofar as HAVA left the specific details of implementation to the states. With respect to both topics, states could modify voter identification requirements generally and the procedures for the use of provisional ballots, as some have.⁴³ 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.

A related issue concerns proof of citizenship as a condition for registration. A number of bills have been introduced, but the issue first emerged at the state level when Arizona voters approved a 2004 referendum that required citizenship proof for voting.⁴⁴ A number of Latino advocacy groups mounted a legal challenge to the law on the grounds that it is discriminatory, but a federal judge rejected the request for a temporary restraining order in June 2006.⁴⁵

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 security environment following the terrorist attacks of 2001 raised concerns before the 2004 elections that further attacks or other events might disrupt an election and even affect the outcome.⁴⁶ Questions were 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.⁴⁷ Those statutes might 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.

⁴³ For descriptions of state legislation on this and other election reform issues, see National Council of State Legislatures, *NCSLnet Search: Election Reform Legislation*, <http://www.ncsl.org/programs/legman/elect/elections.cfm>.

⁴⁴ In the 109th Congress, H.R. 4462 and H.R. 4844 would amend the National Voter Registration Act of 1993 (the motor-voter law) to require proof of citizenship to register to vote. S.Amdt. 4085 would amend the Immigration Reform Bill of 2006 (S. 2611) to require proof of citizenship to register.

⁴⁵ Matthew Benson, "Request to halt ID rules rejected," *The Arizona Republic*, June 20, 2006.

⁴⁶ For an overview, see CRS Report RL32654, *Safeguarding Federal Elections from Possible Terrorist Attack: Issues and Options for Congress*, by Eric A. Fischer et al..

⁴⁷ 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*, by Keith Bea, L. Cheryl Runyon, and Kae M. Warnock. This report also contains links to reports that profile provisions of each state.

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.⁴⁸ 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

Polling-place security issues were less prominent during the 2006 elections. Whether Congress considers actions to safeguard future elections may depend on events associated with them or with elections 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.⁴⁹

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.

In recent years, heightened interest in reforming the electoral college tends to coincide with closely contested presidential 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, subsequent reform efforts addressed

⁴⁸ National Association of Secretaries of State and others, *Overview: Election Security Planning for States*, September 24, 2004.

⁴⁹ For a detailed discussion of the electoral college and reform, see CRS Report RL30804, *The Electoral College: An Overview and Analysis of Reform Proposals*, by L. Paige Whitaker and Thomas H. Neale, and CRS Report RL32611, *The Electoral College: How It Works in Contemporary Presidential Elections*, by Thomas H. Neale.

election administration and voting issues, rather than reform of the electoral college. Reform proposals 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.

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