

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is a darker shade of blue. The hourglass is centered on the page.

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*Election Reform: Issues and Legislative Proposals in the  
109th Congress*

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Finance Division

February 28, 2007

**Abstract.** This report discusses the range of election issues covered by various legislative proposals in the 109th Congress, and the various approaches taken by those bills. Bills introduced in the 110th Congress will be covered elsewhere. The purpose of this report is not only to provide a history of legislative activity on election reform, but more importantly, to provide information that may be useful in deliberations on those issues in the 110th Congress.

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# CRS Report for Congress

## Election Reform: Issues and Legislative Proposals in the 109<sup>th</sup> Congress

Updated February 28, 2007

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Prepared for Members and  
Committees of Congress

# Election Reform: Issues and Legislative Proposals in the 109<sup>th</sup> Congress

## Summary

Despite the passage of the Help America Vote Act (P.L. 107-252) in 2002, many election-reform issues have continued to arise in conjunction with subsequent federal elections. Attempts to address those issues legislatively took form in many bills introduced in recent Congresses, particularly the 109<sup>th</sup>. Some of those bills responded specifically to issues that arose from the passage of HAVA. Others responded to events, especially problems that occurred during the 2004 federal election and as a result of the hurricanes of 2005. Still others addressed longstanding election-reform issues. Some were very specifically targeted to a particular issue, whereas others were more comprehensive, focusing on several issues. The various approaches taken by those bills may be used in legislation considered by the 110<sup>th</sup> Congress. The issues addressed included the following:

- concerns about *conflict of interest* and *political activity* among voting system vendors and among election officials,
- voting rights of *convicted persons*,
- election *crimes*,
- the use of *deceptive practices* relating to voting by political operatives or others,
- voting rights in the *District of Columbia* and other areas other than the 50 states,
- *early* and *absentee* voting,
- authorization and authority of the *Election Assistance Commission*,
- the *Electoral College*,
- *enforcement* of HAVA requirements,
- voter *error*,
- election *holiday*,
- voter *identification*,
- voter *information*,
- alternative *language* requirements,
- voting *leave for employees* on election day,
- access to polling places by *observers*,
- *payments* to states,
- *proportional representation* and *instant-runoff* voting,
- the use of *provisional ballots*,
- the *provisioning of voting machines* to polling places,
- *redistricting* procedures,
- *state laws* on election administration,
- election *statistics*,
- the level of *training* given to pollworkers,
- *security* of electronic voting systems and verifiability of ballots, and
- voter-*registration* requirements.

In addition to appropriations, two bills with election-related provisions were enacted: reauthorization of the Voting Rights Act (P.L. 109-246), and defense reauthorization (P.L. 109-364). This report will not be updated.

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# Election Reform: Issues and Legislative Proposals in the 109<sup>th</sup> Congress

Despite the passage of the Help America Vote Act (P.L. 107-252) in 2002, many election-reform issues have continued to arise in conjunction with subsequent federal elections. Attempts to address those issues legislatively have taken form in many bills introduced in recent Congresses. Some bills were introduced specifically in response to issues raised in consequence of the passage of HAVA. Others were introduced in response to events, especially problems that occurred during the 2004 federal election and as a result of Hurricane Katrina in August 2005. Still others addressed longstanding election-reform issues. Some were very specifically targeted to a particular issue, whereas others were more comprehensive, focusing on several issues.

This report discusses the range of election issues covered by various legislative proposals in the 109<sup>th</sup> Congress, and the various approaches taken by those bills. Bills introduced in the 110<sup>th</sup> Congress will be covered elsewhere. The purpose of this report is not only to provide a history of legislative activity on election reform, but more importantly, to provide information that may be useful in deliberations on those issues in the 110<sup>th</sup> Congress.

While HAVA appears generally to have been well-received by both election officials and the public,<sup>1</sup> some provisions have been controversial, especially the following:

*Accessibility of voting systems.* Section 301(a)(3) of HAVA requires that each polling place have at least one fully accessible voting system, beginning in 2006. Some observers believe that this requirement is excessive and exceptions should be made for jurisdictions with low population, such as rural areas and small towns, where voters are well-known to election officials. Proponents counter that the high and increasing mobility of the U.S. population, and the problem of the “hidden” disabled, make accessibility essential for full enfranchisement. No bills were introduced in the 109<sup>th</sup> Congress that addressed this issue.

That is not the case with the other major controversy relating to accessibility. Sec. 301(a)(3) promotes the use of direct recording electronic (DRE) voting machines. They are widely recognized as the most accessible kind of voting system. However, they have been criticized as being insufficiently secure in comparison to paper-based systems, and several bills would have required that they produce paper ballots.

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<sup>1</sup> See, for example, CRS Report RL32938, *What Do Local Election Officials Think about Election Reform?: Results of a Survey*, by Eric A. Fischer and Kevin J. Coleman.

*Provisional voting.* Sec. 302(a) requires that any person be permitted to fill out and submit a provisional ballot at a polling place, if the person claims to be a registered, eligible voter in the jurisdiction but is not so considered by election officials at the polling place. It went into effect in 2004. While some concerns have been raised about difficulty of implementation, the major controversy with respect to this provision has been with respect to the criteria for counting provisional ballots — in particular, whether a ballot should be counted if cast in a polling place other than that at which the voter is registered. Several bills were introduced that would have addressed this controversy.

Among other issues that arose in conjunction with recent federal elections and which were addressed by proposed legislation were

- concerns about political activity and conflict of interest among voting system vendors and among election officials,
- the use of deceptive practices relating to voting by political operatives or others,
- enforcement of HAVA requirements,
- access to polling places by observers,
- the provisioning of voting machines to polling places,
- the level of training given to pollworkers,
- voting rights of convicted persons,
- various aspects of voting-system security,
- voter identification, and
- voter-registration requirements.

Other issues addressed by one or more bills included absentee and early voting, alternative language requirements, authorization of and budget submission by the Election Assistance Commission (EAC), election crimes, the date on which elections are held and whether or not election day should be a holiday, the gathering and reporting of statistics relating to elections, the workings of the Electoral College, extension of voting rights to residents in areas other than the 50 states, extension of HAVA deadlines, HAVA payments to states, proportional representation and instant-runoff voting, redistricting procedures, state laws on election administration, voter error, voter information, and voting leave for employees on election day. Unless otherwise indicated, provisions of bills discussed in this report refer only to federal elections.

## **Issues**

### **Absentee and Mail Voting**

Absentee voting has been steadily increasing in the United States for many years. It is rapidly becoming the standard form of voting on the west coast. Oregon now conducts its elections by mail, and in Washington state, most ballots are now cast absentee. In California, the percentage of ballots cast absentee has steadily increased for many years, climbing to about one-third of all ballots in 2004. In addition to California, Oregon, and Washington, an additional 25 states permit “no-

excuse” absentee voting, which means that any voter can request an absentee ballot without needing to provide a reason for the request.<sup>2</sup> Several states permit registering as a permanent absentee voter.

Under the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA, P.L. 99-410), all persons serving in the military, their spouses and dependents, and U.S. citizens living abroad are eligible to vote absentee in federal elections. Versions of the law date to World War II. The various state laws and UOCAVA illustrate the trend toward making absentee voting available to larger numbers of voters, either for reasons of convenience or to secure the franchise for eligible voters whose circumstances preclude voting in person. Critics of this trend cite concerns about the possibility of fraud, as none of the safeguards of the polling place exist. In the polling place, each vote is cast in private, it cannot be connected with the person who cast it, and the voter cannot be easily bribed or coerced. Those safeguards cannot be guaranteed for absentee balloting or some other types of remote voting,<sup>3</sup> and many election officials resist the trend toward no-excuse absentee voting for this reason.

Despite those trends and concerns, there is little in HAVA that relates to absentee voting. Sec. 246 requires the EAC to conduct a study on postage-free absentee voting, and §303(b) requires first time registrants who vote by mail to include a specified form of identification with their ballots, but most HAVA absentee-voting provisions pertain to military and overseas voters.

Seven bills would have solidified the trend toward increasing absentee voting by eliminating restrictions on it, requiring states to permit any eligible voter to vote absentee (**H.R. 533, H.R. 939, H.R. 1835, H.R. 3557, H.R. 4141, S. 17, and S. 450**). Three of those (**H.R. 533, H.R. 4141, and S. 17**) would have permitted the use of a national federal write-in absentee ballot to be developed by the EAC.

Other bills had more limited provisions on absentee voting (see also the section on hurricane response below). **H.R. 2104** required jurisdictions to accept absentee ballots sent by mail with insufficient postage. **H.R. 2250** required the EAC to establish mandatory standards for prevention of fraud and abuse in the handling of absentee ballots. **H.R. 3094** required the EAC to establish best practice guidelines for treatment of absentee ballots of military and overseas voters. **S. 414** required that voter rolls at polling places indicate which voters have requested or submitted an absentee ballot. It also required that, except as provided for in UOCAVA, absentee ballots can be counted only if received by the close of business on election day. **H.R. 533, H.R. 939, H.R. 4141, S. 17, and S. 450**, in contrast, would have permitted all

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<sup>2</sup> These states are Alaska, Arizona, Colorado, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Maine, Maryland, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Utah, Vermont, Wisconsin, and Wyoming.

<sup>3</sup> As used in this report, the term *remote voting* refers to any type of voting other than in person in the home precinct on election day. Other major types of remote voting include early voting (see below) and Internet voting (which is rarely used in federal elections — see CRS Report RS20639, *Internet Voting*, by Kevin J. Coleman).

absentee ballots to be accepted for at least 10 days following the election. **S. 4018** would have established a grant program to assist states in replacing polling-place voting with vote-by-mail, delineated required procedures, and required the EAC to develop best practices and provide technical assistance. It also required GAO to evaluate implementation.

## Accessibility of Voting Systems and Polling Places for Persons with Disabilities

HAVA requires that voting systems “be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters” (§301(a)(3)). It requires that there be at least one accessible system in each polling place starting in 2006, and that any voting systems purchased with HAVA title II funds starting in 2007 be fully accessible. It further states that properly equipped DREs will meet the accessibility requirement.

DREs can provide improved accessibility in several ways. They include magnified ballots for the vision-impaired; audio ballots for blind voters and, potentially, voters whose primary language is unwritten, or English speakers with substantial reading difficulty; and special interfaces for physically challenged voters. However, DREs have also been controversial because of concerns about security and reliability in recording and counting votes. As a result, some observers have proposed that alternatives to DREs be used to address accessibility needs. Some argue that paper-based systems can be made sufficiently accessible, either electronically or mechanically. Others believe that making those systems accessible is not currently feasible and that any risks associated with the use of DREs can be addressed through administrative measures (see also the sections on security of voting systems and on voter verification below).

Three bills required that HAVA accessibility requirements be met through use of modular voting architecture, in which different voting functions, such as generating and casting votes, are performed by separate devices.<sup>4</sup> **H.R. 550** required that voting systems used for disability access separate the functions of vote generation, vote verification, and vote casting if the system is strictly electronic; and allowed the voter to verify and cast the ballot on paper or another medium privately and independently in an accessible manner. **H.R. 939** and **S. 450** required that at least one voting system per polling place provide opportunity for inspection and verification of the ballot for disabled voters and language minorities by separating the vote generation and vote-casting functions, and produce a paper record available for visual, audio, and pictorial verification. Both bills required states to instruct election

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<sup>4</sup> See Caltech/MIT Voting Technology Project, *Voting: What Is, What Could Be, July 2001*; CRS Report RL32139, *Election Reform and Electronic Voting Systems (DREs): Analysis of Security Issues*. An optical scan voting system separates vote generation (marking the ballot) from vote casting (running the ballot through the optical-scan reader), and some voting systems have been developed that can mark optical-scan ballots using a DRE-like interface, including audio capability for visually-impaired voters.



officials on the right of persons with disabilities to receive assistance, and both required the EAC to develop best practices for voter-verification for persons with disabilities.

## Alternative Language Requirements

HAVA requires that voting systems provide alternative-language accessibility, pursuant to the requirements of the Voting Rights Act of 1965 (VRA, 42 U.S.C. 1973aa-1a). Despite the reauthorization of the VRA (see Garrine P. Laney, *The Voting Rights Act of 1965, As Amended: Its History and Current Issues*, CRS Report 95-896), the alternative-language requirements may be an issue. Those requirements provide that jurisdictions with sufficiently large populations of non-English-proficient citizens be provided voting materials in their native language(s) (42 U.S.C. 1973aa-1a). **H.R. 9** (now P.L. 109-246) reauthorized this provision until 2032, and **S. 2703** contained a similar provision. **H.R. 550** would have required the EAC to develop best practices for voter-verification for persons with languages other than English. **H.R. 997** required that official government functions be conducted in English. **H.R. 4408** and **S. 3828** would have eliminated the Voting Rights Act requirements to provide ballots and other voting materials and information in languages other than English.

## Conflicts of Interest

One controversy preceding the 2004 federal election followed a statement by the then-chairman and CEO of Diebold Corporation, one of the major manufacturers of DREs and optical scan systems. Walden O'Dell, in a 2003 fund-raising letter, reportedly stated his commitment to delivering Ohio for President Bush in the 2004 election.<sup>5</sup> This led some Democratic activists to publicly voice concerns about a partisan conflict of interest on the part of Diebold. Concerns about such conflicts have been voiced by some election-reform advocates for years. The concerns have not been limited to potential partisan bias, but have also included business relationships among vendors, election officials, and testing laboratories. Some advocates have argued for standards and other controls over such potential conflicts of interest, while others have proposed use of government or nonprofit laboratories for certification, with some even proposing federalization of voting-system design and manufacturing, as occurs in some other countries.<sup>6</sup> However, others believe that such concerns are unwarranted and that no additional measures are needed to control conflict of interest.

Several bills would have addressed potential conflicts by manufacturers and laboratories. **H.R. 470** would have modified §231(b) of HAVA to require the EAC to establish standards regarding conflicts of interest by laboratories that certify voting systems. **H.R. 550** and **H.R. 3094** required both certification laboratories and manufacturers to meet EAC conflict-of-interest standards, with the latter specifically

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<sup>5</sup> Melanie Warner, "Machine Politics In the Digital Age," *New York Times*, November 9, 2003, Sec. 3, p. 1.

<sup>6</sup> Among the most notable examples are India and Brazil.

including software manufacturers and prohibiting partisan political activities by manufacturers. **H.R. 470** and **H.R. 3094** prohibited accreditation of laboratories not meeting those standards. **H.R. 533** prohibited conflict of interest more broadly — including any entities involved with voting machines — under EAC standards. It also required the EAC to study the feasibility and desirability of conducting elections through nonpartisan election boards. **H.R. 939** and **S. 450** more narrowly prohibited officers of voting system companies from taking part in prohibited political activities, as defined in the bill, in any election for which a voting system produced by the manufacturer is used.

See also the section on political activities of election officials below.

## Early Voting

Early voting usually refers to the practice in which election jurisdictions permit voting in a polling place before election day. While absentee voting is a form of early voting, the former involves ballots cast via mail, rather than in person, and the two are usually treated separately (see the section on absentee and mail voting above). Texas first implemented a limited version of early voting in 1963. There are many approaches to early voting, and the number of states using it is growing. According to the National Conference of State Legislatures, 23 states had some form of early voting in 2004, whereas only 13 states offered it in 2000. In some states, a voter can cast a ballot at any of several 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.

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 developments or issues in a campaign occurring after early voters have cast their ballots. Also, as with other forms of remote voting, a greater risk of fraud arguably exists. Proponents state in contrast that early voting can increase turnout and lessen the risk of certain kinds of distortions, such as undue impact from late-occurring events. In Maryland, for example, the legislature approved early voting for 2006 over the Governor's veto, but the law was rejected by a Court of Appeals ruling on August 25.<sup>7</sup> Objections raised in court included the assertion that it would require amending the Constitution, which guarantees voting in one's ward or election district on election day. Maryland's version of early voting would have made balloting available before the election at a limited number of places in each county. Despite such controversies, the recent increase in the number of states offering early voting suggests that the trend will continue.

**H.R. 533**, **H.R. 939**, **H.R. 3557**, **S. 17**, **S. 450** would have required states to implement early voting and for the EAC to establish standards for it. **H.R. 2104** required states to permit local jurisdictions to allow early voting should they wish to do so. **S. 414** required that voter rolls at polling places indicate which voters have voted prior to election day.

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<sup>7</sup> Tom Stuckey, "Maryland court overturns early voting law," *Associated Press*, Aug. 26, 2006.

## Election Assistance Commission (EAC)

HAVA did not provide the EAC with regulatory authority and authorized funding for it only through FY2005.<sup>8</sup> It requires the National Institute of Standards and Technology (NIST) to provide some technical guidance to the EAC but did not authorize any funding for that purpose. Some have called for the EAC to be abolished after distribution of HAVA payments is completed, with responsibilities for voting system guidelines and certification of testing laboratories transferred to NIST. Others, however, believe that the EAC should have rulemaking authority, higher funding, and greater budgetary independence from the executive branch.

Five bills would have provided indefinite funding authorization to the EAC. **H.R. 550** provided permanent authorization but did not specify a funding level. **H.R. 533** and **S. 17** authorized \$23 million, and **H.R. 939** and **S. 450** \$35 million, for FY2006 and sums necessary thereafter. These four bills would have exempted the EAC from requirements of the Paperwork Reduction Act and required concurrent transmission of EAC budget estimates or requests to the White House and Congress, as did **H.R. 3094**. They also required NIST to provide technical support to the EAC, with the latter two also allocating \$4 million of the FY2006 appropriation for that purpose. **H.R. 939** and **S. 450** also would have authorized, for FY2006 — 10, an additional \$20 million to the EAC for recounts, voter-verification systems, and security (see those sections below for details).

**H.R. 939** and **S. 450** would have repealed the HAVA prohibition on rulemaking by the EAC, and **H.R. 533** and **S. 17** provided the commission with rulemaking authority relating to requirements and standards added by the bill.

**H.R. 550**, **H.R. 939**, and **S. 450** would have repealed the EAC's exemption from the advertising requirements of 41 U.S.C. 5 with respect to contracting and compensation for supplies and services.

## Election Crimes

Elections are often accompanied by reports of deceptive acts by some partisans or other parties, including such things as selective discarding of voter registration applications and misinforming voters about date and location of an election and eligibility of voters. Federal law currently prohibits intimidation of voters (18 USC 594, 42 USC 1973i(b)) and providing false information in voter registration (42 USC 1973i(c), 15544), among other activities, but does not expressly forbid acts such as those listed above. However, some states have expressly made some of those practices illegal.<sup>9</sup>

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<sup>8</sup> The EAC did, however, receive \$14.2 million in funding for FY2006 (P.L. 109-115).

<sup>9</sup> For example, Kansas law prohibits "...knowingly: (1) Destroying any application for voter registration signed by a person pursuant to K.S.A. 25-2309, and amendments thereto, (2) obstructing the delivery of any such signed application to the county election officer or the chief state election official, or (3) failing to deliver any such application to the appropriate county election officer or the chief state election official as required by law" (K.S.A. 25- (continued...))

**H.R. 533** prohibited unfair and deceptive acts and practices, as identified by the U.S. Attorney General, that would affect voting in federal elections, and provided for civil and criminal penalties and a private right of civil action by victims; it required the Attorney General to establish procedures for tracking and documenting voter irregularities. **H.R. 939**, **H.R. 3094**, **H.R. 4463**, **S. 450**, **S. 1975**, and **S. 4069** prohibited deception regarding the time, place, or manner of conducting an election, or voter eligibility, with **S. 4069** also prohibiting deception about party affiliation of candidates and sponsors of campaign communications. All provided criminal penalty for violations, with **H.R. 4463**, **S. 1975**, and **S. 4069** also providing a private right of civil action by victims and requiring the Attorney General to respond to reports of irregularities, to establish regulations on corrective actions, and to report allegations to Congress. **S. 414** made destruction of property with the intent of preventing or impeding a person from voting a criminal act. **S. 4034** made it a federal crime to tamper with a voting system or ballots and provided a private right of action for affected persons.

Accusations relating to vote-buying are also not uncommon. Federal law currently prohibits vote-buying and -selling (18 U.S.C. 597). **S. 414** would have expanded this prohibition by making conspiring to buy votes a criminal act.

See also the section on voter registration below.

## Election-Day Holiday/Date Change

In some countries, elections are held on days when businesses are closed, either by holiday or by holding the election on a weekend. Some observers advocate such an approach in the United States, arguing that it will increase turnout and improve the availability of qualified pollworkers. Opponents argue that there is no evidence for those assertions, and that alternatives such as early and “no-excuse” absentee voting already exist to accommodate voters who have difficulty getting to polls on election day. HAVA requires the EAC to perform a study on the “feasibility and advisability” of an election-day holiday and other alternatives (Sec. 241(B)(10)), but it is silent on the timing of that study.

**H.R. 533**, **H.R. 939**, and **S. 17** specified a deadline of six months after enactment for the EAC report on establishing an election-day holiday. **H.R. 3557**, **H.R. 6200**, and **S. 450** would have made election day a federal holiday, as did **H.R. 63** and **S. 1130**, which also required a GAO study of the impact of the change on voter participation. **H.R. 1647** and **S. 144** would have changed election day to the first consecutive Saturday and Sunday in November, with the latter also specifying polling-place hours.

## Election Statistics

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<sup>9</sup> (...continued)

2421a); and “mailing, publishing, broadcasting, telephoning or transmitting by any means false information intended to keep one or more voters from casting a ballot or applying for or returning an advance voting ballot” (K.S.A. 25-2415).

One common complaint among advocates of improved election administration is the lack of consistent and reliable data across states relating to various aspects of the conduct of elections. States vary substantially in the data they collect and make publicly available. For example, some jurisdictions, when reporting election results, release only the number of votes for each candidate. That makes it impossible to determine how many voters failed to cast valid votes for a given office (these are known as “residual votes”<sup>10</sup>). HAVA requires the EAC to serve as a “a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal elections” (Sec. 202), but does not in general require the EAC to collect or the states to provide specific information in that regard.<sup>11</sup> The EAC has developed an election-day survey that it first administered for the 2004 federal election.<sup>12</sup> This instrument, as well as other EAC surveys,<sup>13</sup> could potentially provide a basis for standardization of data collected by state and local jurisdictions for future elections.

**H.R. 939** and **S. 450** required each state and jurisdiction to report specified election data — on voters, ballots, polling places, and voting machines — to the EAC within six months after the election, and for the EAC to report on the election to Congress within nine months after the election.

## Electoral College

Presidential elections are decided under what is called the electoral college system. Proposals to reform the system are not uncommon, especially after close elections, and several reform bills have been introduced in the 109<sup>th</sup> Congress. For

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<sup>10</sup> The number of residual votes for a given contest is the number of ballots cast that do not record a valid vote for that contest. A ballot may be uncounted because it does not indicate a choice (this is called an undervote), indicates more choices than allowed (overvote — for example, votes for two or more presidential candidates), or is otherwise spoiled (for example, contains marks that might permit identification of the voter). “Drop-off” and “roll-off” are related terms.

<sup>11</sup> HAVA does require the EAC to conduct a survey on the possibility of establishing a free absentee ballot postage program (Sec. 246). It also requires election jurisdictions to report to the EAC the number of ballots sent to, returned from, and cast by absent uniformed-services and overseas voters, and for the EAC to make the results public (Sec. 703). States are also required to submit statistics on voter registration to the EAC under regulations (11 C.F.R. 8) issued pursuant to Sec. 9(a) of the National Voter Registration Act of 1993 (P.L. 103-31).

<sup>12</sup> Election Assistance Commission, *Final Report of the 2004 Election Day Survey*, report prepared by Election Data Services, September 7, 2005, [[http://www.eac.gov/election\\_survey\\_2004/intro.htm](http://www.eac.gov/election_survey_2004/intro.htm)].

<sup>13</sup> These include surveys relating to the Uniformed Overseas and Overseas Citizens Absentee Voters Act of 1986 (UOCAVA — see Kevin J. Coleman, *The Uniformed and Overseas Citizens Absentee Voting Act: Background and Issues*, CRS Report RS20764) and the National Voter Registration Act (NVRA — see Government and Finance Division, *The National Voter Registration Act of 1993: History, Implementation, and Effects*, CRS Report RL31105).

in-depth discussion of reform proposals, see CRS Report RL32831, *The Electoral College: Reform Proposals in the 109th Congress*, by Thomas H. Neale.

**H.R. 939** and **S. 450** would have required that certificates of ascertainment<sup>14</sup> of electors be sent by overnight courier at least six days before the electors are to meet. **H.R. 1579** would have changed the date for the meeting of electors from mid-December to January 2, with any disputes resolved no later than three days prior to that date, and required that certificates of ascertainment and votes of electors be sent by the most expeditious method available, to arrive within two days after the meeting.

**H.J.Res. 8**, **H.J.Res. 17**, **H.J.Res. 36**, **H.J.Res. 50**, and **S.J.Res. 11** would have abolished the Electoral College and provided for direct popular election of the President and Vice President. **H.J.Res. 17** additionally provided for a run-off election if no candidate received 40% or more of the vote total, and **H.J.Res. 36** would have limited direct election to cases where the winner receives a majority of votes cast.

## Enforcement of HAVA Requirements

One of the more contentious issues in the debate over HAVA was over methods to enforce compliance with the act's requirements. As enacted, HAVA provides two methods: The U.S. Attorney General may bring civil action to enforce compliance (§ 401), and each state is required to establish grievance procedures (§ 402). There has been some debate over whether current law provides individuals with the right of federal court action in response to alleged violations. A ruling in one case before the 2004 federal election affirmed such a right,<sup>15</sup> but whether it would be upheld in other cases is not settled.

**H.R. 470** would have required that polling places have a posted notice of the state administrative complaint procedures required by HAVA, and limited eligibility for filing complaints about voting machines to those voters eligible to use them. **H.R. 550** would have permitted individuals to file complaints with and required response from the U.S. Attorney General about violations of HAVA requirements. It provided a private right of action to enforce those requirements. **H.R. 2250** required the Attorney General to initiate investigations of voting irregularities within 30 days of receiving a complaint accompanied by evidence and to notify the chief state election officer of the status of the investigation every 60 days until completed. It did not affect state investigations if they did not interfere with or impede federal ones. It also provided the EAC with authority to conduct audits for compliance with the provisions in the bill and impose penalties for violations.

## Extension of Voting Rights to Residents in Areas Other Than the 50 States

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<sup>14</sup> These list the names of the electors and the number of votes each received and are sent to the National Archives (3 USC 6).

<sup>15</sup> *Sandusky County Democratic Party v. Blackwell*, 386 F.3d 815 (6<sup>th</sup> Cir. 2004).

Only U.S. citizens from the 50 states and the District of Columbia are eligible to vote in presidential elections. Those from commonwealths and territories cannot do so. Furthermore, none of the latter have voting representatives in Congress, and that restriction also applies to the District of Columbia. Proposals to extend such rights may take various forms, and several bills were introduced in the 109<sup>th</sup> Congress.<sup>16</sup>

**H.J.Res. 1, H.J.Res. 17** would have extended voting rights for President and Vice President to residents of commonwealths and territories. **H.R. 190** would have made residents of the District of Columbia residents of the state of Maryland for purposes of congressional and presidential elections. **H.R. 398, H.R. 5410, and S. 195** would have required that the District of Columbia be treated as a state for purposes of congressional elections. **H.R. 2043** and **H.R. 5388** required that it be treated as a state for purposes of representation in the House of Representatives only, and added, until reapportionment after the 2010 census, one representative for the District and one for one other state to be named. **H.R. 873** provided for a nonvoting delegate to the House of Representatives for the Commonwealth of the Northern Mariana Islands.

## HAVA Deadlines

HAVA contains three sets of January 1 deadlines for state and local jurisdictions to comply with the requirements in the act:

- *2004: provisional voting, voter information, and voter identification requirements.*<sup>17</sup> While some concerns were raised about compliance with these requirements in conjunction with the 2004 federal election, especially with respect to provisional voting (see below), in general implementation appears to have been successful.
- *2006: replacement of punchcard and lever machine voting systems for states participating in the replacement program (with waiver), statewide computerized voter registration list (with waiver), voting system requirements (including at least one fully accessible voting station per polling place).* The ability of state and local jurisdictions to meet the deadline for these requirements has raised concerns among some. In particular, The requirement for computerized statewide registration list appears to be a problem in some states (see below) and some states may also have not yet completed replacement of voting systems. In addition, the EAC has concluded that lever machines cannot meet HAVA's auditability requirements,

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<sup>16</sup> For more detail, see CRS Report RL32933, *Political Status of Puerto Rico: Background, Options, and Issues in the 109th Congress*, by Keith Bea, and CRS Report RL32340, *Territorial Delegates to the U.S. Congress: Current Issues and Historical Background*, by Betsy Palmer.

<sup>17</sup> This requirement went into effect with respect to individuals on January 1, 2003 (§ 303(d)(2)(B)).

which implies that jurisdictions could not simply return title I funds rather than replacing their lever machines.<sup>18</sup>

- *2007: additional voting system requirement of full accessibility for all systems purchased with funds made available under title II after this date.* This requirement appears to be dependent on additional appropriations for requirements payments under HAVA. Congress last appropriated such funds in FY2004.

**H.R. 3163** would have delayed each of the above deadlines, except the last, for four years. **H.R. 4666** would have extended the deadline for replacement of punchcard and lever machine systems to November 2006.

## Hurricane Response

The aftermath of Hurricanes Katrina and Rita created challenging conditions for the people of Alabama, Louisiana, Mississippi, and Texas, as well as for state and local governments there. Some problems were immediately apparent, while others, such as conducting elections, were less obvious at first. To varying degrees, states struggled to locate hundreds of thousands of displaced voters, replace damaged voting equipment and find alternative polling places, and recruit poll workers to replace those who were displaced by the storms. In some cases, HAVA funds intended to meet the law's requirements were needed for recovery efforts, which might potentially affect achieving compliance. For more detail, see CRS Report RS22436, *Elections in States Affected by Hurricanes Katrina and Rita*, by Kevin J. Coleman and Eric A. Fischer.

Three bills (**H.R. 3734**, **H.R. 4197**, and **S. 1867**) provided for displaced victims of Hurricane Katrina to be eligible to vote under provisions of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, 42 USC 1973ff) in federal elections from 2006 to 2008.

**H.R. 4197** would have authorized \$50 million in FY2006 for EAC grants to states to replace equipment and supplies damaged as a result of Hurricane Katrina. **H.R. 4140** was similar but also applied to damage resulting from Hurricane Rita. **S. 2166** was similar to **H.R. 4140** but also covered restoring and replacing records.

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<sup>18</sup> Election Assistance Commission, "EAC Advisory 2005-005: Lever Voting Machines and HAVA Section 301(a)," September 8, 2005, available at [<http://www.eac.gov/docs/EAC%20Advisory%2005-005.pdf>]. The advisory states, "lever voting systems have significant barriers which make compliance with Section 301(a) difficult and unlikely."



## Military and Overseas Voters

Continuing efforts to facilitate absentee voting and registration for military and overseas voters resulted in a number of incremental adjustments to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, P.L. 99-410) in recent years. The National Defense Authorization Act of 2002 amended UOCAVA to permit a voter to submit a single absentee application in order to receive an absentee ballot for each federal election in the state during the year. HAVA subsequently amended that section of the law to extend the period covered by a single absentee ballot application to the next two regularly scheduled general elections for federal office, and added a new section that prohibits a state from refusing to accept a valid voter registration application on the grounds that it was submitted prior to the first date on which the state processes applications for the year. Because of inherent difficulties that result from the need to vote absentee from outside the United States and the timing of ballot availability, efforts to increase the efficiency of UOCAVA's performance are likely to continue.

**S. 2507, S. 2766, S. 2767, and H.R. 5122** (P.L. 109-364) included provisions on military and overseas voting. **H.R. 5122** continued the Interim Voting Assistance System (IVAS) for military voters and employees of the Department of Defense through the 2006 elections and requires GAO reports on IVAS and other efforts to utilize electronic mail, facsimile transmission, and the Internet to facilitate registration and voting for military and overseas voters. **S. 2766** and **S. 2767** required similar reports, and all four bills eliminated inspections of voting assistance installations by the inspector general.

## Observers at the Polling Place Or Counting Location

The 2004 federal election saw an unusually large number of observers,<sup>19</sup> including some from the Organization for Security and Co-Operation in Europe (OSCE) who had been invited by the U.S. State Department.<sup>20</sup> State laws on observers and policies of election jurisdictions vary, with some restricting observers in various ways. Some observers have proposed that steps be taken to ensure access of nonpartisan domestic and international observers to elections.<sup>21</sup> Opponents believe that decisions about access should be left to state or local jurisdictions, given perceived variations in need and risks that the presence of such observers could place undue strain on polling place operations.

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<sup>19</sup> electionline.org, *The 2004 Election*, December 2004, available at [<http://www.electionline.org>].

<sup>20</sup> Organization for Security and Co-Operation in Europe, *United States of America, 2 November 2004 Elections, OSCE/ODIHR Election Observation Mission Final Report*, March 31, 2005, [[http://www.osce.org/documents/odihr/2005/03/13658\\_en.pdf](http://www.osce.org/documents/odihr/2005/03/13658_en.pdf)].

<sup>21</sup> In addition to OSCE, the Carter-Baker Commission (Commission on Federal Election Reform, *Building Confidence in U.S. Elections*, September 2005, available at [<http://www.american.edu/ia/cfer>]) and the National Association of Secretaries of State (resolutions of July 24, 2005, available at [<http://www.nass.org/electioninfo/electioninfo.html>]) have recommended greater access.

**H.R. 533** and **S. 17** would have required states to allow access to polling places for specified classes of observers, and **H.R. 939** and **S. 450** for nonpartisan observers. **H.R. 3910** required states to permit parties with candidates in an election to observe vote tabulation and certification.

## Payments to States<sup>22</sup>

HAVA authorized \$3 billion for FY2003 — 5 in payments to states to meet the requirements of title 3, and \$650 million in one-time payments for replacing voting equipment and improving election administration. Of those amounts, all but \$672 million in requirements payments have been appropriated, and all appropriated funds have been disbursed to the states.<sup>23</sup> Some observers have expressed concerns that the amount of funding appropriated so far is insufficient to meet HAVA requirements, with some arguing that the remaining authorized amount is also insufficient. Some additionally argue that the HAVA requirements have increased the ongoing costs of elections to state and local jurisdictions, and that failure to provide ongoing funding makes the requirements an unfunded mandate. Opponents argue that the impact on ongoing costs can be minimal, depending on how states choose to implement the requirements, and that ongoing federal funding may lead to increased federal control over election administration, contrary to the established U.S. tradition of state and local control.<sup>24</sup>

**H.R. 533** and **S. 17** would have authorized \$2 billion for FY2006 and sums necessary thereafter for payments to states to meet HAVA requirements. **H.R. 939** would have authorized \$3 billion for FY2006 and sums necessary thereafter for payments to states to meet HAVA requirements. **H.R. 3557** would have increased authorization for requirements payments by \$15 million.

**H.R. 939** would have authorized \$500 million without fiscal year limitation for payments to implement the voter-verification and audit-capacity requirements in the bill (see relevant sections in this report) and required the EAC to make those payments within 30 days of enactment. **H.R. 550** would have authorized \$150 million for FY2006 to meet the additional voter-verification and other requirements in that bill. **H.R. 939** would also have required states to establish procedures to disburse payments immediately to local jurisdictions implementing the requirements, and to include in their state HAVA plans a description of procedures to ensure that payments are immediately distributed to local governments for costs of implementation. **S. 450** had similar provisions to **H.R. 939** but did not require states to establish procedures for immediate disbursement of payments to local jurisdictions

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<sup>22</sup> This section includes general provisions and those not covered under other topics in this report.

<sup>23</sup> An across-the-board rescission in FY2004 reduced the total amount appropriated for requirements payments to \$2.319 billion.

<sup>24</sup> HAVA concentrates responsibility for meeting its requirements at the state level of government, but also deemphasizes the federal role both by leaving the methods of implementation to the states (§ 305) and denying the EAC regulatory authority not previously granted under NVRA (§ 209).

or to include disbursement procedures in state plans. **S. 450** also would have appropriated the payments in addition to authorizing them.

**H.R. 5777** prohibited use of HAVA payments to promote or oppose candidates or political parties, directly or indirectly. **H.R. 6363** required that Puerto Rico be treated the same as one of the 50 states with respect to HAVA payments.

## Political Activities of Election Officials

Some controversy emerged after the 2000 and 2004 elections over the activities of state elected officials with responsibility for conducting elections. In some cases, the controversy concerned official actions with respect to the election process, and in others, conflict of interest issues arose over the political activities of state officials with election responsibilities. The National Voter Registration Act of 1993 (P.L. 103-31) requires each state to identify a chief state election official, and HAVA requires those officials to perform certain tasks. In most states, that official is the secretary of state or equivalent. Those are usually elected officials, although a number are appointed by the governor or selected by the legislature. In all cases, the secretary of state is a partisan office. However, in several states, the chief state election official is appointed by a bipartisan board. Arizona, California, and Ohio considered legislation in 2006 to regulate in some fashion the political activities of state or local officials with election responsibilities.

**H.R. 834, H.R. 939, S.391, and S. 450** prohibited chief state election officials from taking part in campaigning or other prohibited political activities with respect to any federal election over which the official has managerial authority.

## Polling-Place Capacity

The occurrence in 2004 of long lines at some polling places, and long waits for some voters, raised questions about whether election jurisdictions were distributing voting systems and pollworkers efficiently and fairly. HAVA is silent on this issue, and states vary with respect to requirements for polling place capacity, and little research is available on how best to determine polling place capacity.<sup>25</sup> Some innovations are occurring, such as the use of “vote centers” rather than traditional precinct polling places in some jurisdictions,<sup>26</sup> and easing of waits on election day is one of the arguments used by advocates of early and no-fault absentee voting.

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<sup>25</sup> One exception is a study of allocation in Cuyahoga County, OH, performed at the request of the county, in which a simulation model led to the conclusion that with the county’s allocation strategy, “even a moderate turnout ratio will likely cause certain polling locations to be overwhelmed” (Election Science Institute, *DRE Analysis for May 2006 Primary, Cuyahoga County, Ohio*, August 2006, available at [[http://bocc.cuyahogacounty.us/GSC/pdf/esi\\_cuyahoga\\_final.pdf](http://bocc.cuyahogacounty.us/GSC/pdf/esi_cuyahoga_final.pdf)]).

<sup>26</sup> Vote centers, pioneered by Larimer County, CO (information is available on the county clerk’s website at [[http://www.co.larimer.co.us/elections/votecenters\\_tab.htm](http://www.co.larimer.co.us/elections/votecenters_tab.htm)]) are conveniently located polling places that allow voters from any precinct in a jurisdiction to cast a regular ballot.

**H.R. 533** and **S. 17** required states to adhere to standards to be developed by the EAC on the minimum required numbers of voting systems and pollworkers at polling places. **H.R. 939** and **S. 450** required each state to provide for a minimum number of voting systems, pollworkers, and election resources for each voting site, according to standards to be established by the EAC, to ensure equal waiting times of one hour or less. They required that the standards take into account specified demographic factors and the type of voting system. Deviation from the standards due to unforeseen circumstances, such as a natural disaster or terrorist attack, is permitted upon reasonable public notice. They also required the EAC to establish and states to follow a remedial plan for each jurisdiction where the EAC determines that a substantial number of voters waited more than 90 minutes in the November 2004 election, and that the EAC study encouraging government workers to serve as pollworkers.

**H.R. 4989** required that states follow standards specified in the bill for number, location, and operating hours of polling places, the number and training of pollworkers, and the number of check-in and voting stations in a polling place. It specifically applied the requirement to early-voting sites as well as election-day polling places. It required the EAC to develop guidance for this requirement, provided for a private right of action to enforce it, and would have authorized \$50 million to fund implementation. It also directed the EAC to study alternative methods to obtain pollworkers.

## Pollworker Training

In most jurisdictions, pollworkers on election day are volunteers who undergo little training and are paid little if at all for a workday that often runs 14 hours or more. Traditionally, many are retired and many are reportedly not technologically proficient.<sup>27</sup> Jurisdictions vary substantially in how they staff the polls and how successful they are, with more staffing problems tending to occur in lower-income jurisdictions.<sup>28</sup> HAVA established two specific programs aimed at improving the availability of pollworkers, one to recruit college students as pollworkers (§ 501 — 503), and one to recruit high school students (§ 601). There appears to be little publicly available research on pollworker training, but what evidence is available supports the contention that pollworkers themselves regard the training as inadequate.<sup>29</sup>

**H.R. 533** required all pollworkers to undergo training to be established by the EAC. **H.R. 939** and **S. 450** required each state and jurisdiction to ensure that pollworkers receive adequate training on specified topics no earlier than three months before the election. **H.R. 2250** required states to certify that pollworkers have training programs on specified topics and would have authorized sums necessary for payments to states to meet this requirement.

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<sup>27</sup> See for example, Election Science Institute, *DRE Analysis*.

<sup>28</sup> EAC, *2004 Election Day Survey*, Chapter 12.

<sup>29</sup> *Ibid.*

## Proportional Representation and Instant-Runoff Voting

In the United States, elected officials are chosen mostly in single member, plurality elections whereby the candidate with the most votes in the election district is elected.<sup>30</sup> Parliamentary elections often use a type of proportional system, with candidates elected from a party list according to the overall proportion of the vote received by a party. A form of proportional representation has been used on occasion at the local level in the United States to elect multiple representatives from a single district, with voters choosing more than one candidate for the contest. A variation on this approach is cumulative voting, in which the voter can split his or her vote (for example, voting for 2 candidates gives each one-half a vote, voting for 3 one-third, and so forth). Federal law does not permit proportional representation for seats in the House of Representatives.<sup>31</sup>

Another approach is “instant-runoff” elections, in which voters rank candidates, and if no candidate wins a majority of first choices, the candidate with the lowest number of first choices is eliminated and the second choice on each of those ballots is added to the totals for the corresponding candidates remaining.<sup>32</sup> The process is repeated, if necessary, until one candidate has a majority of votes. This method is used in some other countries and in some local jurisdictions in the United States.

**H.R. 2690** would have permitted states to use multiseat congressional districts for some or all of its House seats and to use proportional voting to fill them. It also permitted states to use instant-runoff voting in federal contests except for multiseat districts and would have authorized \$500 million for FY2006 and sums necessary thereafter for grants to states to implement the bill’s provisions. **H.R. 1989** would have established a commission to examine alternatives to the current method of electing Members of the House, including cumulative voting and proportional representation.

## Provisional Ballots

HAVA requires that any voter not listed as registered must be offered and permitted to cast a provisional ballot (§ 302(a)). This is a separate ballot that is set

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<sup>30</sup> This is sometimes called the “first past the post” method.

<sup>31</sup> “In each State entitled ... to more than one Representative ..., there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative....” (2 USC 2c).

<sup>32</sup> For example, suppose the following scenario: There are three candidates A, B, and C. At the first tally, A receives 40% of first choice votes, B 35%, and C 25%. No candidate has won a majority, but C, having the fewest first-choice votes, is eliminated. Of those voters who voted for C as first choice, 80% chose B as their second choice, and 20% chose A. Those votes are then added to the totals for A and B, leading to a final result of A receiving 45% of the vote and B 55%. B therefore wins the election. The example shows benefits and disadvantages of instant-runoff voting. More voters clearly had a stronger preference for A than either other candidate. However, a majority of voters also preferred B over A.

aside along with relevant information about the voter so that election officials can determine whether the person is entitled to vote. Jurisdictions must establish free access systems so that voters casting a provisional ballot can determine if it was counted and if not, why not. HAVA also requires that any ballots cast during a court-ordered extension of polling hours be provisional (§302(c)). 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 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.<sup>33</sup> In some states a ballot is counted at least for some contests even if cast outside the voter's home precinct. In other states, provisional ballots are counted only if they are cast in the home precinct. Provisional ballots may be especially at issue in some close contests, where the outcome may not be known until these ballots are processed, which can take several days and may be subject to litigation. Provisional balloting may become less important with implementation of the HAVA requirement for computerized registration lists (see below).

**H.R. 533, H.R. 2104, H.R. 4989, and S. 17** required provisional ballots to be counted if cast at any polling place in the state where the voter is registered. **H.R. 2104** also required that voters appearing at the wrong polling place be given the location of the correct one and notified that they can vote there instead of casting a provisional ballot. **H.R. 3094** required provisional ballots to be counted if cast at any polling place in the jurisdiction (before 2008) or state (thereafter) where the voter is registered, and that each polling place have lists of names and correct polling places for each registered voter in the jurisdiction. **H.R. 4989** required implementation of safeguards to protect against the counting of both a provisional and other ballot by the same voter in an election, and for the EAC to provide voluntary guidance for this requirement.

**H.R. 939 and S. 450** required that the determination of eligibility for casting a provisional ballot be made without regard to where the ballot was cast or to any requirement to present identification; and required the appropriate state election official to develop procedures for timely processing and counting of the ballots, according to EAC guidelines. They also required that the procedures include standards to assure that candidates and parties have effective recourse to and informed participation in recount and contest procedures after the provisional ballot count, with reasonable procedures to protect personal information collected during ballot processing. **H.R. 4989** prohibited jurisdictions from requiring that voters who meet the identification requirements in the bill and who cast a provisional ballot provide any additional identification subsequently for the ballot to be counted. It also required that each provisional ballot contain all information needed to cast a vote in the polling place. The bill also would have modified the notification requirement to stipulate that election officials actively notify the voter whether the ballot was counted and if not, the reasons why and how the voter may challenge that

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<sup>33</sup> 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.

determination. It required election officials, in making their determination, to consider any information provided by the voter when applying to register. It also prohibited recounts before provisional ballots have been counted, and required that rejected provisional ballots be treated as applications for voter registration.

**S. 414** would have modified HAVA to stipulate that whether a provisional ballot is counted will be determined in accordance with state law relating to where a person is required to vote.

**H.R. 4989** would have repealed the HAVA requirement that voters who vote during polling hours extended by court order must use provisional ballots, and stipulated that they must vote using the same method they would during regular voting hours.

## Recounts

State laws vary for recounting ballots and for the circumstances that trigger a recount.<sup>34</sup> Some states require an automatic, partial recount for a close race, or in some cases for all races.<sup>35</sup> Most permit recounts when requested by a candidate, although some allow the request only if the election is sufficiently close. Several also permit recounts requested by voters. Recounts may also be ordered in at least some states if irregularities are suspected.

Some observers believe that to help prevent and detect fraud and error, partial recounts should be done for all elections, and some believe that those recounts should be done by hand rather than machine.<sup>36</sup> The likelihood that such an approach will detect any irregularities depends on several factors, especially the size and structure of the recount.<sup>37</sup> Usually, a partial recount would involve selecting a sample of precincts, recounting all the ballots in each, and comparing the results with the original count. In general, the probability that any problems with the original count would be detected will increase as the percentage of precincts recounted increases and as the number of precincts with errors increases. A nationwide, partial manual recount could pose significant logistical challenges. For example, a recount of 2% of precincts after the 2004 federal election would have involved hand counting 2.4 million ballots. Also, states are free to adopt different standards for what constitutes a vote on a given system. Therefore, if the EAC, rather than states, performed the recounts, it would need to vary the standards it used from state to state.

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<sup>34</sup> See [electionline.org](http://electionline.org), *Recounts: From Punch Cards to Paper Trails*, October 2005, available at [<http://www.electionline.org>].

<sup>35</sup> *Ibid.* Those states are California, Kentucky, New York, and West Virginia.

<sup>36</sup> California, for example, requires an automatic, hand recount of ballots in at least 1% of precincts statewide in each election (California Elections Code § 15360), and West Virginia, for voter-verified paper ballots, 5% of precincts (WVC § 3-4A-28).

<sup>37</sup> See also CRS Report RL33190, *The Direct Recording Electronic Voting Machine (DRE) Controversy: FAQs and Misperceptions*, by Eric A. Fischer and Kevin J. Coleman.

Whether hand counts or machine counts are more accurate can also vary. In general, humans are not as accurate as machines in performing simple, highly repetitive tasks such as counting ballots. That is one reason why repeated manual recounts may yield different results. Machine accuracy is especially likely to be higher if the ballot choices made by the voter are printed rather than marked by hand. In contrast, machines are not as good at judging voter intent if markings are ambiguous or not within machine parameters, as may be the case if the ballots are marked directly by voters, as in most optical scan systems. Machine miscounts can also result from miscalibration or other technical problems. However, there are several ways to guard against such problems.

**H.R. 533** required states conducting recounts to follow standards to be established by the EAC. **H.R. 550** required the EAC to conduct random, unannounced hand counts of voter-verified records for each general election, including state and local elections at the option of the state, in at least 2% of precincts per state (at least 1 precinct per county), to compare the counts with those announced by the state, and to publish the results. It required each state and jurisdiction being audited to provide the EAC with the information and materials it requests for the audit. It would have prohibited certification of results for an audited election before publication of the audit results, except when necessary for the appointment of presidential electors. It also provided the EAC authority to conduct additional hand counts if the audit raises concerns about accuracy, and provided for the Attorney General or an individual to seek declaratory and injunctive relief with respect to actions of a jurisdiction relating to an audit. It would have authorized appropriation to the EAC of sums necessary for the recounts required by the bill.

**H.R. 939** and **S. 450** required the EAC to conduct random, unannounced hand counts of voter-verified records for each general election, including state and local elections at the option of the state, in at least 2% of precincts in each state immediately after the election, and to publish the results in the Federal Register.

## Redistricting and Apportionment

The U.S. Constitution requires that apportionment of seats in the House of Representatives be aligned with the population sizes of the various states every ten years.<sup>38</sup> In 2003, the state of Texas performed a second redistricting, the constitutionality of which was eventually decided by the U.S. Supreme Court.<sup>39</sup> **H.R. 830**, **H.R. 2642**, **H.R. 4094**, and **S. 2350** would have restricted states to one congressional redistricting after each decennial census, with an exception for court-ordered redistricting. All but **H.R. 830** further required each state to appoint and use an independent commission for redistricting. **H.R. 5451** and **S. 2693** required the

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<sup>38</sup> See Congressional Research Service, *United States Constitution: Analysis and Interpretation (Constitution Annotated), Article 1, The Census Requirement*, [[http://www.crs.gov/products/conan/Article01/topic\\_S2\\_C3\\_1\\_1.html](http://www.crs.gov/products/conan/Article01/topic_S2_C3_1_1.html)].

<sup>39</sup> See CRS Report RS22479, *Congressional Redistricting: A Legal Analysis of the Supreme Court Ruling in League of United Latin American Citizens (LULAC) v. Perry*, by L. Paige Whitaker.



Census Bureau to adjust census figures to eliminate the effect of illegal immigrants on apportionment.

## Restoration of Voting Rights to Convicted Persons

Voting eligibility has been an issue throughout the history of the United States. Most often, the focus has been on suffrage itself — who should have the right to vote. In the Colonial period and early years of the Republic, requirements based on land-ownership, age, and sex were the norm, and they were intended to limit voting to those with a stake in the community and the necessary understanding of public affairs that naturally followed. Although non-landowners and women may have voted in some places, eligibility was mostly limited to landed freemen of 21 years or older. Because the U.S. Constitution addressed neither eligibility nor how elections should be conducted, practices varied from state to state. Over time, uniform requirements for eligibility concerning race, sex, economic status, and age were adopted (the 15<sup>th</sup>, 19<sup>th</sup>, 24<sup>th</sup>, and 26<sup>th</sup> Amendments). Eventually, a pattern of registration practices had developed to maintain control of the franchise and serve the interests of the political parties. Citizenship and lengthy residency requirements were adopted, in part, as a reaction to waves of immigration and the rise of machine politics. And by requiring a voter to declare their party affiliation at the time of registration, voting in primaries would be limited to party members only. In the South, the dominant Democratic Party adopted the white primary, which excluded African Americans from party membership and, consequently, from any kind of effective participation. The white primary, poll taxes, literacy tests, the grandfather clause and other discriminatory devices were eventually banned, yet they illustrate the history of voter registration as a means for limiting participation.

With the advent of universal suffrage in the 20<sup>th</sup> century, much of the policy debate over enfranchisement has largely subsided, except for the issue of voting by those who have been convicted of crimes. States vary with respect to what they permit.<sup>40</sup> Almost all states prohibit voting while incarcerated for a felony, the exceptions being Maine and Vermont. Most also prohibit felons from voting while on parole or probation. Restoration procedures vary, being automatic after a specified period in many states while others require special petition or other action.

**H.R. 663, H.R. 939, H.R. 2398, H.R. 4762** and **S. 450** declared that the right of a U.S. citizen to vote shall not be denied or abridged because that person has been convicted of a criminal offense unless, at the time of the election, the person is serving a sentence or on parole or probation (“under the supervision ... of a governmental authority” in **H.R. 2398**) for a felony offense. Except for **H.R. 2398**, they would have permitted the Attorney General or, if a violation is not corrected within a specified time, the person who has suffered from it to bring a civil action for relief; they forbade prohibition of less restrictive laws, and would have established that rights and remedies provided are in addition to all others provided by law. Except for **H.R. 663**, they also required states to notify convicted felons of their right to vote when reinstated. **H.R. 1300** was similar except it limited restriction of voting

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<sup>40</sup> The Sentencing Project, “Felony Disenfranchisement Laws in the United States,” November 2006, [<http://www.sentencingproject.org/pdfs/1046.pdf>].

rights to incarcerated felons and conditioned the use of federal prison funds on the existence of a notification program. **H.R. 4202** was similar to **H.R. 1300** except it did not contain the notification or funding provisions of the latter bill.

## Security of Voting Systems and Procedures

There is currently some controversy about how secure computer-assisted voting systems are from tampering. The controversy has been most focused on systems that record votes directly onto an electronic medium — called direct-recording electronic voting systems or DREs. There has been some disagreement among experts about both the seriousness of the security concerns and what should be done to address them.<sup>41</sup> While it is generally accepted that tampering is possible with any computer system, given sufficient time and resources, some experts believe that the concerns can be addressed using established practices. Others believe that significant changes are needed.

Among the steps proposed are requiring the use of “open source” software code, which would be available for public inspection; prohibition of wireless communications in voting systems; adoption of stringent security process standards and practices by manufacturers and others in the chain of custody for voting systems; the development of systems that effectively mimic electronically the observability of manually counted paper ballot systems; and the printing by DREs of document ballots where a voter could verify the choices made and that would be hand-counted if the election results were contested (these last two are discussed in the section on voter verification below). Some experts have called for such changes before DREs are more widely adopted. Others believe that procedural and other safeguards make DREs sufficiently safe from tampering, that some proposed solutions would create substantial problems that would more than outweigh any benefits, and that the controversy risks drawing attention away from the demonstrated utility of DREs in addressing known problems of access to and usability of voting systems.

In December 2005, the EAC adopted the *Voluntary Voting System Guidelines (VVSG)*, a set of technical standards for voting systems, based on the *Voluntary Voting Systems Standards (VSS)* previously developed by the Federal Election Commission.<sup>42</sup> Developed in cooperation with NIST, the guidelines, required by HAVA, contain many security provisions related to items listed above. However, they do not require open-source software or the verification methods mentioned above, they do not prohibit the use of wireless communications, and they do not specifically address security process standards and practices. Also, in cooperation with NIST, the EAC is developing a HAVA-required voting-system testing and certification program to replace the one used with the VSS.

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<sup>41</sup> See CRS Report RL32139, *Election Reform and Electronic Voting Systems (DREs): Analysis of Security Issues*, by Eric A. Fischer, and CRS Report RL33190, *The Direct Recording Electronic Voting Machine (DRE) Controversy: FAQs and Misperceptions*, by Eric A. Fischer and Kevin J. Coleman.

<sup>42</sup> See CRS Report RL33146, *Federal Voluntary Voting System Guidelines: Summary and Analysis of Issues*, by Eric A. Fischer.

*Software.* Some computer security experts believe that open-source code is more secure than proprietary or closed-source code, while others believe that closed-source code can be at least as secure.<sup>43</sup> Voting systems currently in use rely on closed-source code. Also, some current voting systems in widespread use employ proprietary commercial off-the-shelf (COTS) software, such as Microsoft Windows. It is doubtful that a company providing closed-source COTS software would be willing to disclose the code. In addition, HAVA defines *voting system* to include components other than those in the voting machine per se, such as the computer code used to define ballots and to make materials available to the voter. Such components are part of all voting systems and probably use proprietary software (operating systems, word processors, database software, and so forth) in all cases. Therefore, it appears unlikely that any voting system currently in use in the United States — except hand-counted paper-ballot systems where the ballot is not generated with the aid of a computer — could meet an open-source requirement.

It is also not clear what impact an open-source requirement would have on the marketplace for voting systems. While it may draw in new companies that specialize in using open-source code, and provide new opportunities for innovation, it could also cause some current voting system manufacturers to withdraw from the marketplace, especially if they believed that revealing the code of their systems would substantially reduce the competitiveness of their products.<sup>44</sup> Such potential problems could presumably be addressed by precisely defining what components of what voting systems an open-source requirement would affect.

One alternative to open source is the use of a reference collection such as NIST's National Software Reference Library.<sup>45</sup> A digital signature is determined for deposited software and can be compared to the signature of corresponding software received by a state or local jurisdiction before it is installed in voting machines. If the signatures differ, the jurisdiction's software has been modified. Several major vendors have voluntarily deposited software with the library for use in this kind of comparison.<sup>46</sup> This procedure permits testing of software integrity without revealing proprietary code, but it cannot test for problems that might exist in the reference copy itself. For example, if malicious code were hidden in the software at the factory during the development process, it would not be detected by this procedure. However, other methods are available to reduce the risk of such tampering (see section on code of practice below).

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<sup>43</sup> See CRS Report RL31627, *Computer Software and Open Source Issues: A Primer*, by Jeffrey W. Seifert.

<sup>44</sup> If the reason for loss of competitiveness were security vulnerabilities that were revealed as a result of the disclosure, the withdrawal might be warranted, but if what would be revealed were legitimate intellectual property such as innovations in the user interface, then withdrawal might reduce the opportunity for further innovation.

<sup>45</sup> National Software Reference Library, "NSRL and Voting System Software," April 3, 2006, [<http://www.nsrll.nist.gov/vote.html>].

<sup>46</sup> National Software Reference Library, "Voting Software Reference Data Set," March 7, 2006, [<http://www.nsrll.nist.gov/votedata.html>].

**H.R. 533, H.R. 550, H.R. 939, and S. 450** would have required the use of open-source software in voting machines and directed the EAC to establish software standards. Those bills and **H.R. 3094** required disclosure of the software code to the EAC for public inspection. **H.R. 3094** also required manufacturers to provide the EAC and the state chief election official (SCEO) with copies of election software code used in the state and to notify the SCEO immediately of any alterations. **H.R. 550** prohibited alteration of code after certification of the system unless it was recertified. **H.R. 470** required that software for any electronic voting machine used by a state be submitted to the state by the manufacturer and that the state test the software in the voting machine at least 30 days before the election and on the day of the election. **H.R. 3094** required that each SCEO ensure that all election software be digitally signed by all custodians and make that information publicly available.

*Communications.* The use of wireless communications in computer systems provides unique risks with respect to attack by hackers and therefore requires special attention with regard to security. Some observers believe that voting systems should not use wireless communications, because of those potential security risks, while others believe that such communications can be made sufficiently secure. However, any mode of electronic communication — by modem, Internet, or memory card, as well as wireless — provides potential points of attack for a voting system; but some means of communication is required. Many computer experts would argue that proper use of cryptographic methods would provide more security than prohibition of any one mode of communication, but that if wireless communication were to be prohibited, then Internet and possibly even modem communications should be as well. Nevertheless, wireless communication is arguably the least secure by far of the three, and the EAC has recommended that it not be used.<sup>47</sup>

**H.R. 550, H.R. 939, and S. 450** prohibited the use of wireless, power-line, or concealed communication devices in voting systems, or connection to the Internet; and required certification of voting systems by EAC-accredited laboratories as meeting those requirements.

*Code of practice.* It is generally accepted that security should involve a focus on three elements: personnel, technology, and operations.<sup>48</sup> The personnel element focuses on a clear commitment by leadership, appropriate roles and responsibilities, access control, training, and accountability. The technology element focuses on the development, acquisition, and implementation of hardware and software. The operations element focuses on policies and procedures.

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<sup>47</sup> Election Assistance Commission, “Issues and Shared Practices in Administration Management and Security for All Voting Systems,” 9 August 2004, [<http://www.eac.gov/bp/avs.asp>]. The *VVSG* contain detailed provisions on recommended controls for security if wireless communications are used (Vol. 1, Chap. 7, available at [[http://www.eac.gov/vvsg\\_intro.htm](http://www.eac.gov/vvsg_intro.htm)]).

<sup>48</sup> National Security Agency (NSA), “Defense in Depth: A Practical Strategy for Achieving Information Assurance in Today’s Highly Networked Environments,” NSA Security Recommendation Guide, 8 June 2001, available at [<http://nsa2.www.conxion.com/support/guides/sd-1.pdf>].

Maryland, Ohio, and California have undertaken studies of the security of DREs.<sup>49</sup> While the studies took different approaches and examined different aspects of DRE security, they addressed aspects of the above elements, and each found concerns in whatever areas of security it examined. Those included computer software and hardware, and security policies and procedures, including personnel practices, along the supply chain from the manufacture of the machines to their use in the polling place. The studies made specific recommendations for addressing the risks and concerns identified, with many of the recommendations relating to operations and personnel.

HAVA contains no explicit requirements relating to those elements with regard to the development, manufacture, and deployment of voting systems. It does require technological security measures for state voter-registration lists (see below), and the auditability requirement for voting systems can be an important security control.

**H.R. 470, H.R. 550 and H.R. 3094** required voting-system manufacturers to identify to the EAC those persons involved in writing the software, including any convictions for fraud (**H.R. 550 and H.R. 3094** specified election fraud but the latter also included any felony). **H.R. 550** required manufacturers and election officials to document the chain of custody of software used in voting systems. **H.R. 939 and S. 450** prohibited the use of voting systems the manufacturers of which did not meet security standards relating to background checks, internal security, chain of custody for software, provision of software codes to the EAC, alteration of codes, and other requirements as may be stipulated by NIST. **H.R. 3910** required criminal background checks for election officials involved in vote tabulation and certification.

*Other provisions.* **H.R. 939 and S. 450** required testing laboratories to disclose to the EAC information relating to certification and for the EAC to make that information publicly available (such disclosure is not currently required). The bills required the EAC to report to Congress, in consultation with NIST, on a proposed security review and certification process for voting systems, and on safeguarding the security of voting systems, including standards for manufacturers. They also required the EAC, in consultation with NIST, to provide security consultation services for

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<sup>49</sup> *Maryland:* Science Applications International Corporation (SAIC), “Risk Assessment Report: Diebold AccuVote-TS Voting System and Processes” (redacted), SAIC-6099-2003-261, 2 September 2003; Maryland Department of Legislative Services, “A Review of Issues Relating to the Diebold AccuVote-TS Voting System in Maryland,” January 2004; Maryland Department of Legislative Services, “Trusted Agent Report: Diebold AccuVote-TS Voting System,” prepared by RABA Technologies Innovative Solution Cell, 20 January 2004 — reports available at [[http://www.elections.state.md.us/citizens/voting\\_systems/index.html](http://www.elections.state.md.us/citizens/voting_systems/index.html)].

*Ohio:* Ohio Secretary of State, “DRE Security Assessment, Vol. 1, Computerized Voting Systems, Security Assessment: Summary of Findings and Recommendations,” prepared by InfoSENTRY, 21 November 2003; Ohio Secretary of State, “Direct Recording Electronic (DRE) Technical Security Assessment Report,” prepared by Compuware, 21 November 2003 — reports available at [<http://www.sos.state.oh.us/sos/HAVA/hava.aspx?section=4>].

*California:* David Wagner and others, “Security Analysis of the Diebold AccuBasic Interpreter,” February 14, 2006, available at [[http://www.ss.ca.gov/elections/elections\\_vs.htm](http://www.ss.ca.gov/elections/elections_vs.htm)].

election administration to states and localities and would have authorized \$2 million for that purpose from FY2006 to FY2010. **H.R. 278** and **H.R. 3910** required that the voluntary voting system guidelines developed by the EAC include provisions on the security of electronic data.

## State Laws on Election Administration

Some concerns have been raised in recent elections about possible confusion among voters resulting from changes to election laws and procedures. HAVA requires that certain information be posted at polling places (§302(b)) but does not require public notice of such changes.

**H.R. 533, H.R. 939, S. 17, and S. 450** would have required states to provide public notice before an election of any changes in state election-administration law. **H.R. 939, H.R. 3094, and S. 450** required each state to publish all laws, regulations, procedures, and practices related to elections on January 1 of an election year and to maintain an updated version of this information on an Internet website.

## Voter Error

After the 2000 election, the problem of voter error was one of the issues driving the replacement of voting machines in many jurisdictions. The residual vote<sup>50</sup> was especially high for punchcard voting systems. In general, the worst-performing systems are those that provide little or no feedback to the voter for error prevention and correction. HAVA addressed this problem by providing funding to states for replacement of punchcard and lever-machine systems,<sup>51</sup> and by requiring that voting systems provide for error detection and correction. However, it exempted hand-counted paper ballot, punchcard, and central-count systems from this requirement, provided that states using such systems educate voters about the impact of marking errors and how to correct them.

There are no established standards or benchmarks for voter-error rates. The VVSG contains standards for machine error, but not voter error. One problem is that voters may intentionally fail to vote on one or more ballot items or may even intentionally mismark the ballot. Ballot secrecy makes it impossible to determine with any certainty how much of the residual vote is intentional. Nevertheless, some observers have called for the establishment of national benchmarks for residual votes.

**H.R. 533, H.R. 939, S. 17, and S. 450** would have eliminated the exception for punchcard and central-count voting systems to the voter verification and correction requirement in HAVA. **H.R. 939** and **S. 450** also required the EAC to issue and maintain a uniform benchmark, based on good practices in representative

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<sup>50</sup> See section on election statistics, above.

<sup>51</sup> Lever machines perform fairly well with regard to some kinds of voter error, especially overvotes, but they are no longer manufactured and are widely regarded as obsolete.

jurisdictions, for the residual-vote error rate.<sup>52</sup> The bills stipulated that jurisdictions may not exceed the benchmark. They also required the EAC to study and report to Congress on certain communities that have historically high rates of intentional undervoting compared to the rest of the nation, and directed that the EAC may set a separate benchmark for or exclude such communities from the national benchmark. **H.R. 3557** encouraged states to distribute sample ballots and other voter information prior to elections to reduce voter error.

## Voter Identification

HAVA requires that certain voters who had registered by mail present a form of identification from a list specified in the act (§303(b)). The identification requirement applies only to first-time registrants who register by mail, if the voter has not previously voted in a federal election in the state, or in a local election jurisdiction in cases where the state does not have a computerized, statewide voter registration system. Such voters must present one of the following forms of identification: “a current and valid photo identification [or a copy if voting by mail]; or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.” HAVA also requires that mail-in voter registration forms contain a check box for the registrant to certify that he or she is a U.S. citizen. The act does not prevent states from establishing more stringent identification requirements.

Following the passage of HAVA, states enacted laws to implement the HAVA identification requirements, and in some cases, more stringent requirements. Some states have no additional requirements for voters to present a form of identification beyond those in HAVA. Other states also require voters to present a form of identification from the list in HAVA, or from a more extended list. Still others require all voters to present photo identification. In all cases, voters who cannot present identification are permitted to cast a provisional ballot.

The adequacy of the HAVA requirement has been controversial, and several bills were introduced in the 109th and previous Congresses both to broaden and restrict that requirement.<sup>53</sup> **H.Con.Res. 247** and **S.Con.Res. 53** expressed the sense of Congress that national photo identification requirements for voters should be rejected and that the U.S. Department of Justice should challenge any state law that has discriminatory photo-identification requirements. **H.R. 533**, **H.R. 939**, **S. 450**, and **S. 17** would have modified HAVA to permit use of affidavits to establish identity for first-time voters who register by mail and required the EAC to establish standards for verification of identity of voters. **H.R. 4989** required states to provide durable registration cards free of charge to registered voters. The cards could be used to verify identity at the polling place.

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<sup>52</sup> The residual-vote error rate as defined in these bills is equal to the combined total of the overvotes, spoiled or uncounted votes, and undervotes in the top contest on the ballot, but excluding a researched estimate of intentional undervotes.

<sup>53</sup> For more detail, see CRS Report RS22505, *Voter Identification and Citizenship Requirements: Legislation in the 109th Congress*, by Kevin J. Coleman and Eric A. Fischer.

In contrast, **H.R. 2250** required voters and applicants for voter registration to present a government-issued photo identification when appearing in person, or a copy for mailed applications or ballots, but provides an exception for persons with disabilities. **H.R. 3910** required all voters, beginning in 2008, to provide state-issued photo identification when voting, and establishes required specifications for those identification documents. **H.R. 4462** and **H.R. 5913** required voters to provide proof of citizenship when voting or to have such proof on file with the state election office. **H.R. 5913** further required all voters to present a photo identification card (or copy if voting by mail) issued without charge by the state. **H.R. 4844** required proof of citizenship and photo identification issued by the federal government or a state government for voting in federal elections. It required that voters who cast a provisional ballot because they did not have the required identification provide such within 48 hours for the ballot to be counted. It included an exception for military overseas voters. **S. 414** would have required voters to present a government-issued photo identification if voting in person; if voting absentee, a voter with a valid driver's license would have to include the number, and other voters a copy of a government-issued photo identification, the last 4 digits of the social security number, or the voter-identification number specified in HAVA.

Several bills would have authorized funding for photo identification. **S. 414** would have authorized \$25 million for FY2006 and sums necessary thereafter for EAC payments to states to provide free photo identification cards to registered voters who did not already have them. **H.R. 939** and **S. 450**, which did not require such identification, nevertheless would have authorized \$10 million for FY2006 and sums necessary thereafter to promote the issuance of such cards. **H.R. 2250** would have authorized sums necessary for the EAC to make payments to states to reduce costs to low-income persons of obtaining the identification required by the bill. **H.R. 4989** would have authorized the funds necessary to assist states in issuing voter registration cards. **H.R. 5913** would have authorized funds necessary for the photo identification cards required by the act and withholds federal highway funds from states that fail to comply. **H.R. 4844** required states to provide photo identification documents to qualified voters who did not have such documents, and to provide them to indigent voters at no cost. It would have authorized appropriation of such sums as may be necessary to cover the costs of providing such identification to indigent voters.

It is common practice in many, especially less developed, countries to mark a finger of each voter to prevent double voting. **S. 414** would have authorized \$5 million for EAC grants to states for pilot programs under which each voter is marked with indelible ink after submitting a ballot.

## Voting Leave for Employees on Election Day

One reason sometimes given for lower turnouts on election day is the inability of some workers to take time from work to vote. State laws vary in this regard.

**H.R. 3557** would have required employers to provide their employees with paid or unpaid leave to permit them to vote, with enforcement similar to that provided under the Family and Medical Leave Act of 1993.



## Voting Machine Error

Accuracy in counting is a critical property for voting and vote-counting machines. The *Voluntary Voting System Guidelines* (and previously, the *Voluntary Voting Systems Standards*) sets a maximum counting-error rate during certification tests of 1 in 500,000. HAVA requires that machine error-rates of voting systems conform to the standards set in the *VSS*.

**H.R. 3910** would have required states to test voting systems to ensure they meet the machine-error-rate standards in HAVA.

## Voter Registration

With the passage of the 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.<sup>54</sup> 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,<sup>55</sup> and the unusually large number of new voters who registered in 2004, 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.

*Election-day registration.* Six states — Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming — permit voters to register at the polling place on election day. North Dakota does not have voter registration, relying instead on identification documents or sworn affidavits. All other states have registration deadlines ranging from 8 to 31 days prior to an election.<sup>56</sup> Some observers have proposed wide adoption of election-day registration, arguing that deadlines may pose

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<sup>54</sup> The deadline was January 1, 2004, with an available two-year extension granted to all but ten states — Alaska, Arizona, Georgia, Hawaii, Kentucky, Minnesota, South Carolina, South Dakota, West Virginia, and North Dakota, which does not have voter registration and is therefore exempt from the requirement.

<sup>55</sup> See, for example, electionline.org, *Assorted Rolls: Statewide Voter Registration Databases Under HAVA*, June 2005, available at [<http://www.electionline.org>]; and 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, p. 23, available at [<http://www.brennancenter.org/programs/downloads/HAVA/svrd/SVRD%20matching%20report.pdf>].

<sup>56</sup> Rhode Island permits election-day registration for voting in presidential contests (Election Assistance Commission, *Final Report of the 2004 Election Day Survey*, report prepared by Election Data Services, September 7, 2005, [[http://www.eac.gov/election\\_survey\\_2004/intro.htm](http://www.eac.gov/election_survey_2004/intro.htm)], pp. 2-2 to 2-4).

a significant barrier to new voters or those who have recently moved.<sup>57</sup> However, others argue that election-day registration may increase costs and the risk of fraudulent registrations.<sup>58</sup> **H.R. 496, H.R. 533, H.R. 939, H.R. 3557, S. 17, and S. 450** would have required states to permit election-day registration at the polling place. **H.R. 939** and **S. 450** required the EAC to develop an election-day registration form.

*Registration requirements.* HAVA requires that mail-in registration forms contain specified statements, questions, and check boxes about the age and citizenship of the registrant (§303(b)(4)(A)). The act requires identification for first-time voters who register by mail, but it does not require proof of citizenship. **H.R. 533, H.R. 939, S. 17, and S. 450** would have replaced the questions and statements with an affidavit.<sup>59</sup> **H.R. 3094** required that mail-in voter registration forms more prominently emphasize citizenship requirements. **H.R. 4462** required voters to provide proof of citizenship when registering to vote. **H.R. 4989** required that states accept the federal voter registration form. **S. 414** would have broadened the HAVA identification requirements to include anyone not registering in person with a government employee. It also permitted the use of social security numbers in identification of eligible voters.<sup>60</sup> **H.R. 6253** would have made it a crime to falsely claim to be a U.S. citizen either to register to vote or to vote.

*Internet registration.* Some states permit voters to submit registration applications online. Others require applicants to submit forms by mail or in person. **H.R. 533, H.R. 939, S. 17, and S. 450** required states to provide for Internet voter registration and the EAC to establish standards for such registration. **H.R. 939** and **S. 450** further required the EAC to study and report to Congress on the feasibility of using the Internet for voter registration and other tasks relating to elections. HAVA currently requires the EAC to perform a study on the use of electronics in the electoral process; the study “may include” Internet registration among its elements (§245).

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<sup>57</sup> About 15% of Americans move each year (Jason P. Schachter, “Geographical Mobility: 2002 to 2003,” *Current Population Reports*, U.S. Census Bureau, March 2004, available at [<http://www.census.gov/prod/2004pubs/p20-549.pdf>]).

<sup>58</sup> There appears to be little research on the benefits and disadvantages of election-day registration. There is some evidence that it can increase turnout, and that states practicing it have not experienced cost or fraud problems as a result (R. Michael Alvarez, Stephen Ansolabehere, and Catherine H. Wilson, “Election Day Voter Registration in the United States,” VTP Working Paper #5, June 2002, [[http://vote.caltech.edu/media/documents/wps/vtp\\_wp5.pdf](http://vote.caltech.edu/media/documents/wps/vtp_wp5.pdf)]; R. Michael Alvarez, Jonathan Nagler, and Catherine H. Wilson, “Making Voting Easier: Election Day Registration in New York,” Demos, April 2004, [<http://www.vote.caltech.edu/media/documents/EDRNY0404.pdf>]).

<sup>59</sup> Before being amended by HAVA, NVRA required attestation of eligibility by the applicant.

<sup>60</sup> HAVA permits use of the last 4 digits of the social security number. The Privacy Act of 1974 restricts the use of social security numbers by government agencies, with certain exceptions, including seven states that use the numbers in voter registration (see Kathleen S. Swendiman, *The Social Security Number: Legal Developments Affecting Its Collection, Disclosure and Confidentiality*, CRS Report RL30318).

*Rejection of application.* NVRA requires states to notify applicants of the disposition of their applications (§8(a)(2)). HAVA further requires that applicants be notified if they fail to answer the citizenship question on the form and be provided an opportunity to correct the form (§303(b)(4)(B)). **H.R. 939** and **S. 450** would have required each state and jurisdiction to accept a voter registration application unless there was a material omission or information that affected voter eligibility, which did not include failure to provide a social security or driver's license number, or information concerning citizenship or age other than attestation; guidelines were to be established by the EAC. These two bills, as well as **H.R. 4989**, required a presumption that persons who submit a voter registration application should be registered and required each state and jurisdiction to accept corrected applications. **H.R. 3557** required election officials to permit voters to complete registration forms in a timely manner before the election if the forms were incomplete when submitted. **H.R. 4989** would have broadened the HAVA provision for correcting incomplete voter registration forms (§303(b)(4)(B)) from citizenship to "any information required." **H.R. 3094** prohibited rejection of an application for errors correctable by the state. **S. 414** would have removed the requirement for timeliness from the provision in HAVA relating to incomplete voter registration forms and required that voter registration forms be submitted by the applicant only and within three days after signing.

*Distribution of forms.* The use of third parties to distribute and collect voter-registration forms, a common practice in some states, has been contentious in some instances. **H.R. 2250** would have prohibited, with certain exceptions, distribution of voter registration application forms by persons who had been convicted of a felony, did not provide identifying information to recipients, or failed to meet other state requirements; it required states to establish relevant standards. It also required that persons collecting and transmitting completed forms affirm under penalty of perjury that all applicants presented valid photo identification that matched the information on the form, and set criminal penalties for violations. **H.R. 5776** would have prohibited distribution of forms in a state by compensated persons who had been convicted of a felony, did not provide identifying information to recipients, were not registered to vote in the state, or did not print and sign their names on the form; it would have made distribution by or employment for distribution of such persons a misdemeanor. **H.R. 3910** prohibited payments on a commission basis for distributing or collecting voter registration applications.

*Removal from rolls.* NVRA requires states to make "reasonable efforts" to remove names of ineligible persons from voter rolls and sets specific requirements for removal (§8).<sup>61</sup> It specifically excludes failure to vote as sufficient cause for removal. Many registration lists appear to have substantial numbers of voters who are no longer eligible because they have moved or died, or for other reasons, and NVRA has been criticized as exacerbating those problems. However, some observers have also expressed concern that despite NVRA protections, significant

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<sup>61</sup> A voter may be removed because of change of residence, death, criminal conviction, mental incapacity, or by the voter's request. Removal because of change of residence requires confirmation in writing by the voter, or failure to vote in two consecutive federal elections and failure to respond to a written notice.

numbers of eligible voters have been removed from rolls during some purges. HAVA also requires states to make “a reasonable effort” to remove ineligible registrants from the required statewide lists<sup>62</sup> and to use “safeguards to ensure that eligible voters are not removed in error,” (§303(a)(4)) but it does not modify the NVRA procedures.

**H.R. 533, H.R. 939, S. 17, and S. 450** required public notice of names removed from voter registration lists and notification to individuals before removal. **H.R. 3094** required public notice at least 45 days before an election of names removed and procedures for removal and appeal. **H.R. 4989** required notification and review of any attempt to remove a voter from the list, with special rules for removal by reason of death. **H.R. 939** and **S. 450** also prohibited disclosure of the reason for a voter’s removal except by court order. **H.R. 2778** and **S. 414** permitted removal from voter registration roles of persons who fail to vote in two consecutive election cycles, if they had not responded to mailed notification (**H.R. 2778**), or if they had not notified the registrar of their desire to remain registered and a notice regarding removal was not deliverable (**S. 414**). **H.R. 3094** prohibited removal of persons from a voter registration list for reasons of felony conviction or death unless the database used to determine that status met accuracy standards established by NIST.

*Computerized lists.* HAVA currently requires jurisdictions to provide “adequate technological security measures” to prevent unauthorized access to computerized state voter registration lists. **H.R. 550, H.R. 939, and S. 450** required the EAC to certify security measures to prevent unauthorized access to computerized statewide voter-registration lists. **H.R. 4989** required the EAC to provide voluntary guidance for audits of the lists.

For persons who present an order of protection or affidavit affirming that they are victims of domestic violence, sexual abuse, or stalking, **H.R. 4225** would have required states to omit the address of such a person from the statewide voter registration list and authorizes funds necessary to meet the requirement.

With the HAVA requirement that each state have a computerized, statewide voter registration list, some observers have recommended that those lists be made interoperable, to facilitate transfer of registration between states and reduce the risk of fraud.<sup>63</sup> **S. 414** would have required that state voter registration lists be in formats that permit sharing and synchronization with lists of other states.

*Other.* **H.Con.Res. 73** and **S.Con.Res. 63** denoted the support of Congress for National High School Seniors Voter Registration Day, encouraging all eligible students to register to vote. **H.R. 4989** required that lists of registered voters, and their polling places, be posted online and at polling places, except persons who request exclusion. **S. 414** would have made paying a person to register to vote a criminal act.

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<sup>62</sup> This includes coordinating with relevant state agencies with respect to deaths and felony convictions (§303(a)(2)).

<sup>63</sup> See, for example, Commission on Federal Election Reform, *Building Confidence in U.S. Elections*, September 2005, available at [<http://www.american.edu/ia/cfer>], p. 15.

## Voter Verification

*Voter verification* refers to the capability of the voter to determine that his or her ballot is cast and counted as intended. No voting system currently in use in federal elections provides true voter verifiability.<sup>64</sup> However, paper-based document ballot systems (hand-counted paper ballots, punchcards, and optical scan ballots) arguably exhibit somewhat more verifiability than the nondocument systems (lever machines and DREs).

With current DREs, a voter sees a representation of the choices made on a computer screen or ballot face, but cannot see what choices the machine actually records when the vote is cast. There is no independent record of the voter's choices that the machine totals can be checked against.<sup>65</sup> Document ballots, on the other hand, permit a voter to check the actual ballot before casting it, although the voter cannot verify that the votes on the ballot were counted as the voter intended.

Many computer security experts view the lack of transparency of DREs as a significant security vulnerability, and some advocate addressing this vulnerability by requiring a paper record of the voter's choices that the voter can verify before casting the ballot. This approach is often called a voter-verified paper audit trail, or VVPAT. The VVSG treat VVPAT as one example of a class of independent verification (IV) systems, which include both paper and nonpaper systems.<sup>66</sup>

HAVA currently requires that a permanent paper record be produced for the voting system and that the record be available as an official record for a recount (§301(a)(2)), but it does not require either that the paper record consist of individual ballots or that the paper record be used in recounts. HAVA also requires that the system “permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted” (§301(a)(1)(A)(I)). However, it does not specify the method of verification.

Several bills would have required some form of verifiable paper ballot, although some details varied. **H.R. 278, H.R. 550, H.R. 704, H.R. 939, H.R. 3910, S. 17, S. 330, and S. 450** required that voting systems produce a permanent, voter-verifiable paper ballot, although **H.R. 550** exempted voting systems used exclusively to provide disability access (see section on accessibility above). **H.R. 278, H.R. 704, and S. 330** stipulated that the paper ballot serve as the permanent record of the vote when cast. **H.R. 550** and **H.R. 704** stipulated that the voter-verified paper ballot serve as

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<sup>64</sup> For more in-depth discussion of this issue, 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.

<sup>65</sup> Votes are recorded in more than one location inside the machine, which can protect against certain kinds of recording and counting problems, but these are not truly independent records.

<sup>66</sup> See Election Assistance Commission, “Independent Verification Systems,” *Voluntary Voting System Guidelines*, Version 1.0, Vol. 1, Appendix C, December 13, 2005, [http://www.eac.gov/VVSG%20Volume\_I.pdf].

the true record of votes cast, in the event of inconsistencies or irregularities between electronic and paper records. **H.R. 704** and **S. 330** required that the paper records be used for any recount or audit, and **S. 330** required that it be treated as the correct record in the event of any irregularities. **H.R. 550** and **H.R. 704** required that the paper ballots be suitable for a manual audit equivalent to (**H.R. 550**) or equivalent or superior to (**H.R. 704**) that of a hand-counted paper-ballot voting system. **H.R. 939** and **S. 450** required the paper ballot to be of archival quality; they also limited payments to a state to meet the voter-verification requirements — they could not exceed the average cost of adding a printer with accessibility features to each type of voting system the state could have purchased. **H.R. 6187** and **S. 3943** would have provided reimbursement to jurisdictions with DREs or lever machines that produced and permitted voters to use paper ballots as an alternative. **H.R. 6200** required that hand-counted paper ballots be used in presidential elections.

Two bills provided for alternative means of verification. **H.R. 533** and **S. 17** required that voting systems provide a choice of independent paper, audio, pictorial, or electronic means for voters to verify their choices before the vote is cast, with the resulting records to be available as an official record for audits and recounts; directed the EAC to issue standards for this requirement; and required that the voter-verified records serve as the official count of the vote if they differ from tallies otherwise derived from the voting system. **H.R. 533** prohibited the use of cryptography in the record.

Although HAVA does not prohibit or require any particular voting system, its accessibility requirements effectively encourage the use of DREs, given the state of current technology. Therefore, if VVPAT is deemed essential to ensure the security and integrity of DRE voting, an argument can be made that HAVA should be revised to require it. However, to the extent that the need for VVPAT is not settled, and that requiring it might stifle innovation, and given the focus of HAVA on leaving specifics of implementation to the states, it could be argued that the decision of whether to implement VVPAT is best left to the states. In the 2004 election, only Nevada required VVPAT for all machines. However, for the 2006 election approximately half the states required VVPAT or other paper ballots.<sup>67</sup>

## Bills Introduced in the 109<sup>th</sup> Congress

Unless otherwise indicated, bills introduced in the House were referred to the House Committee on House Administration and those in the Senate to the Senate Committee on Rules and Administration. Similar bills that had been introduced by the same first sponsor in the 108<sup>th</sup> Congress are also noted.

**H.Con.Res. 73 (McCrery).** Supporting the goals and ideals of National High School Seniors Voter Registration Day. Introduced February 17, 2005; passed House December 5, 2006.

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<sup>67</sup> See electionline.org, “Voter-Verified Paper Audit Trail Legislation & Information,” March 6, 2006, [<http://www.electionline.org/Default.aspx?tabid=290>].

**H.Con.Res. 247 (Lewis).** Expressing the sense of Congress that a requirement that United States citizens obtain photo identification cards before being able to vote has not been shown to ensure ballot integrity and places an undue burden on the legitimate voting rights of citizens. Introduced September 20, 2005. Referred to the Committee on the Judiciary but not House Administration.

**H.J.Res. 1 (Christensen).** Proposing an amendment to the Constitution of the United States regarding presidential election voting rights for residents of all United States territories and commonwealths. Introduced January 4, 2005. Referred to the Committee on the Judiciary but not House Administration.

**H.J.Res. 8 (G. Green of TX).** Every Vote Counts Amendment. Introduced January 4, 2005. Referred to the Committee on the Judiciary but not House Administration.

**H.J.Res. 17 (Engel).** Proposing an amendment to the Constitution of the United States to provide for the direct election of the President and Vice President by the popular vote of the citizens of the United States. Introduced January 9, 2005. Referred to the Committee on the Judiciary but not House Administration.

**H.J.Res 36 (Jackson of IL).** Proposing an amendment to the Constitution of the United States to abolish the Electoral College and provide for the direct election of the President and Vice President by the popular vote of all citizens of the United States regardless of place of residence. Introduced March 2, 2005. Referred to the Committee on the Judiciary but not House Administration.

**H.J.Res. 50 (Lofgren).** Proposing an amendment to the Constitution of the United States to abolish the Electoral College and to provide for the direct election of the President and Vice President of the United States. Introduced May 12, 2005. Referred to the Committee on the Judiciary but not House Administration.

**H.R. 9 (Sensenbrenner).** Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006. Introduced May 2, 2006. Referred to the Committee on the Judiciary but not House Administration; reported with amendments May 22; passed House July 13; passed Senate July 20; became Public Law 109-246 July 27.

**H.R. 63 (Conyers).** Democracy Day Act of 2005. Introduced January 4, 2005. Referred to the Committee on Government Reform but not House Administration.

**H.R. 190 (Rohrabacher).** District of Columbia Voting Rights Restoration Act of 2005. Introduced January 4, 2005. Also referred to the Committees on Government Reform and the Judiciary.

**H.R. 278 (King of Iowa).** Know Your Vote Counts Act of 2005. Introduced January 6, 2005.

*108<sup>TH</sup> CONGRESS: H.R. 4187.* Similar to H.R. 278.

**H.R. 398 (Norton).** No Taxation Without Representation Act of 2005. Introduced January 26, 2005. Referred to the Committee on the Judiciary but not House Administration.

**H.R. 470 (Larson).** Improving Electronic Voting Standards and Disclosure Act of 2005. Introduced February 1, 2005.

*108<sup>TH</sup> CONGRESS:* **H.R. 4996.** Similar to H.R. 470 except does not modify HAVA §402(a).

**H.R. 496 (Sabo).** Same Day Voter Registration Act of 2005. Introduced February 1, 2005.

**H.R. 533 (Conyers).** Voting Opportunity and Technology Enhancement Rights Act of 2005. Introduced February 2, 2005. Also referred to the Committee on the Judiciary.

**H.R. 550 (Holt).** Voter Confidence and Increased Accessibility Act of 2005. Introduced February 2, 2005.

*108<sup>TH</sup> CONGRESS:* **H.R. 2239.** Provisions in H.R. 2239 but not in H.R. 550 are (1) extension of time to request payments under title I of HAVA, (2) the option to use an EAC-provided interim paper-based voting system, and (3) a change in the deadline for meeting HAVA requirements. H.R. 550 provides more specificity than H.R. 2239 about the paper-based verification requirement. H.R. 2239 included security provisions relating only to open-source software and communications technologies. H.R. 2239 did not include the provisions in H.R. 550 on (1) conflict of interest, (2) permanent authorization of the EAC, (3) enforcement of HAVA requirements, and (4) additional authorization of requirements payments. H.R. 550 requires recounts in 2% of precincts in each state, whereas H.R. 2239 required recounts in ½% of jurisdictions. H.R. 550 also provides more detail on the methods to be used in connection with the recounts.

**H.R. 663 (Rangel).** Ex-Offenders Voting Rights Act of 2005. Introduced February 8, 2005. Referred to the Committee on the Judiciary.

**H.R. 704 (Gibbons).** Voting Integrity and Verification Act of 2005. Introduced February 9, 2005.

**H.R. 830 (Waters).** To limit the redistricting that States may do after an apportionment of Representatives. Introduced February 15, 2005. Referred to the Committee on the Judiciary.

**H.R. 834 (Strickland).** Federal Election Integrity Act of 2005. Introduced February 15, 2005.

**H.R. 873 (Pombo).** Northern Mariana Islands Delegate Act. Introduced February 17, 2005. Referred to House Committee on Resources; reported June 8, 2005.



**H.R. 939 (Jones of Ohio).** Count Every Vote Act of 2005. Introduced February 17, 2005. Also referred to the Committee on the Judiciary.

**H.R. 997 (King of IA).** English Language Unity Act of 2005. Introduced March 1, 2005. Referred to the Committees on Education and the Workforce and on the Judiciary.

**H.R.1300 (Conyers).** Civic Participation and Rehabilitation Act of 2005. Introduced March 15, 2005. Referred to the Committee on the Judiciary.

**H.R. 1579 (Price of NC).** Count Every Vote Act of 2005. Introduced April 12, 2005.

**H.R. 1647 (Hastings of FL).** Election Weekend Act. Introduced April 14, 2005.

**H.R. 1835 (Davis of California).** Universal Right to Vote by Mail Act of 2005. Introduced April 26, 2005.

**H.R. 1989 (Hastings of FL).** Congress 2008 Commission Act. Introduced April 28, 2005. Referred to the Committee on the Judiciary.

**H.R. 2043 (Tom Davis of VA).** District of Columbia Fairness in Representation Act. Introduced May 3, 2005. Referred to the Committees on the Judiciary and Government Reform.

**H.R. 2104 (Norton).** To amend the Help America Vote Act of 2002 to permit local jurisdictions within a State to conduct early voting in elections for Federal office held in such jurisdictions, and for other purposes. Introduced May 4, 2005.

**H.R. 2250 (Green of WI).** Valuing Our Trust in Elections Act. Introduced May 11, 2005. Also referred to the Committee on the Judiciary.

**H.R. 2398 (Davis of IL).** Constitutional Protection of the Right to Vote Act. Introduced May 17, 2005. Referred to the Committee on the Judiciary but not House Administration.

**H.R. 2642 (Tanner).** Fairness and Independence in Redistricting Act of 2005. Introduced May 25, 2005. Referred to the Committee on the Judiciary but not House Administration.

**H.R. 2690 (McKinney).** Voter Choice Act of 2005. Introduced May 26, 2005. Also referred to the Committee on the Judiciary.

**H.R. 2778 (Dent).** Common Sense in Voter Registration Act of 2005. Introduced June 5, 2005.

**H.R. 3094 (Hoyer).** Secure America's Vote Act of 2005. Introduced June 28, 2005.

**H.R. 3163 (Goode).** To amend the Help America Vote Act of 2002 to delay for 48 months the deadlines by which States must comply with the election administration requirements of title III of such Act, and for other purposes. Introduced June 30, 2005.

**H.R. 3557 (Hastings).** Voter Outreach and Turnout Expansion Act of 2005. Introduced July 28, 2005. Also referred to Committees on Government Reform and on Education and the Workforce.

**H.R. 3734 (Davis of AL).** Displaced Citizens Voter Protection Act of 2005. Introduced September 13, 2005.

**H.R. 3910 (Feeney).** Verifying the Outcome of Tomorrow's Elections Act of 2005. Introduced September 27, 2005.

**H.R. 4094 (Lofgren).** Redistricting Reform Act of 2005. Introduced October 20, 2005. Referred to the Committee on the Judiciary but not House Administration.

**H.R. 4140 (Millender-McDonald).** Ensuring Ballot Access for Hurricanes Katrina and Rita Victims Act of 2005. Introduced October 25, 2005.

**H.R. 4141 (Millender-McDonald).** To amend the Help America Vote Act of 2002 to permit individuals to use a national write-in absentee ballot to cast votes in elections for Federal office, and for other purposes. Introduced October 25, 2005.

**H.R. 4197 (Watt).** Hurricane Katrina Recovery, Reclamation, Restoration, Reconstruction and Reunion Act. Introduced November 2, 2005. Referred to several committees but not House Administration.

**H.R. 4202 (Conyers).** Re-Entry Enhancement Act. Introduced November 2, 2005. Referred to several committees but not House Administration.

**H.R. 4225 (DeLauro).** Victims of Violence Confidentiality Act of 2005. Introduced November 3, 2005.

**H.R. 4408 (King of NY).** National Language Act of 2005. Introduced November 18, 2005. Referred to Committees on Education and the Workforce and on the Judiciary.

**H.R. 4462 (Gingrey).** Voter Verification Act. Introduced December 7, 2005.

**H.R. 4463 (Holt).** Deceptive Practices and Voter Intimidation Prevention Act of 2005. Introduced December 7, 2005. Referred to the Committee on the Judiciary.

**H.R. 4666 (Fitzpatrick of PA).** Voting Machine Deadline Extension Act. Introduced January 31, 2006.

**H.R. 4762 (Millender-McDonald).** Second Chance Voting Rights Act of 2006. Introduced February 15, 2006. Referred to the Committee on the Judiciary.

**H.R. 4844 (Hyde).** Federal Election Integrity Act of 2006. Introduced March 2, 2006; passed House September 20, 2006.

**H.R. 4989 (Holt).** Electoral Fairness Act of 2006. Introduced March 16, 2006.

**H.R. 5122 (Hunter).** John Warner National Defense Authorization Act for Fiscal Year 2007. Introduced April 6, 2006. Referred to the Committee on Armed Services. Passed House May 11; passed Senate, amended, June 22; conference report passed House June 29, passed Senate June 30; became Public Law 109-364 October 17.

**H.R. 5388 (Tom Davis of VA).** District of Columbia Fair and Equal House Voting Rights Act of 2006. Introduced May 16, 2006. Referred to the Committees on the Judiciary and Government Reform.

**H.R. 5410 (Norton).** No Taxation Without Representation Act of 2006. Introduced May 17, 2006.

**H.R. 5451 (Miller of MI).** Fair and Accurate Representation Act of 2006. Introduced May 22, 2006. Referred to the Committee on Government Reform.

**H.R. 5776 (Pearce).** Voter Bounty Registration Act of 2006. Introduced July 12, 2006.

**H.R. 5777 (Pearce).** Fair Voter Education Act of 2006. Introduced July 12, 2006.

**H.R. 5913 (Tancredo).** Voter Integrity Protection Act of 2006. Introduced July 26, 2006.

**H.R. 6187 (Holt).** Confidence in Voting Act of 2006. Introduced September 26, 2006.

**H.R. 6200 (Kucinich).** Paper Ballot Act of 2006. Introduced September 27, 2006. Also referred to the Committee on Government Reform.

**H.R. 6253 (Hyde).** Criminal Code Modernization and Simplification Act of 2006. Introduced September 29, 2006. Referred to the Committee on the Judiciary.

**H.R. 6363 (Fortuño).** To provide for an additional requirements payment under the Help America Vote Act of 2002 to ensure that Puerto Rico is treated in the same manner as other States for purposes of determining the amount of the requirements payment made under such Act, and for other purposes. Introduced December 5, 2006.

**S.Con.Res. 53 (Obama).** Expressing the sense of Congress that any effort to impose photo identification requirements for voting should be rejected. Introduced September 20, 2005.

**S.Con.Res. 63 (Vitter).** Supporting the goals and ideals of National High School Seniors Voter Registration Day. Introduced November 9, 2005.

**S.J.Res. 11 (Feinstein).** Proposing an amendment to the Constitution of the United States to abolish the electoral college and to provide for the direct popular election of the President and Vice President of the United States. Introduced March 16, 2005. Referred to the Committee on the Judiciary but not Rules and Administration.

**S. 17 (Dodd).** Voting Opportunity and Technology Enhancement Rights Act of 2005. Introduced January 24, 2005.

**S. 144 (Kohl).** Weekend Voting Act. Introduced January 24, 2005.

**S. 195 (Lieberman).** No Taxation Without Representation Act of 2005. Introduced January 26, 2005. Referred to the Committee on Homeland Security and Governmental Affairs but not Rules and Administration.

**S. 330 (Ensign).** Voting Integrity and Verification Act of 2005. Introduced February 9, 2005.

*108<sup>TH</sup> CONGRESS:* **S. 2437.** Similar to S. 330.

**S. 391 (Lautenberg).** Federal Election Integrity Act of 2005. Introduced February 16, 2005.

**S. 414 (McConnell).** Voter Protection Act of 2005. Introduced February 17, 2005.

**S. 450 (Clinton).** Count Every Vote Act of 2005. Introduced February 17, 2005.

*108<sup>TH</sup> CONGRESS:* **S. 1986.** Required implementation of a voter-verification method that used “the most accurate technology,” which would not necessarily be a paper ballot as required in S. 450. Both bills contain similar provisions on security review reports and consultation services by NIST. S. 1986 required voting systems to meet federal computer-security requirements or more stringent ones if established by the EAC, whereas S. 450 specifies several requirements and provides NIST the authority to establish additional ones. S. 1986 does not contain any of the other provisions in S. 450.

**S. 2313.**<sup>68</sup> This bill has voter-verification provisions similar to those in S. 450, although the requirements for accessible voting systems are more detailed in the latter. The bills also have similar provisions on (1) communications devices and open-source software, (2) certification of the security of state voter-registration lists, (3) security standards for manufacturers, except that the current bill adds the requirement for background checks, (4) provision of security consultation services to states by NIST, (5) mandatory recounts, and (6) repeal of the EAC’s exemption from certain contracting requirements. S. 2313 authorized \$150 million rather than \$500 million to meet the new verification requirements. The current bill omits the provisions in S. 2313 that accelerated the deadlines for compliance with HAVA requirements and required

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<sup>68</sup> The primary sponsor on this bill was Senator Graham of Florida, but Senator Clinton was listed as the first cosponsor.

deployment of an interim paper system by states unable to meet the verification requirements before the deadline. Other provisions in S. 450 are not contained in S. 2313.

**S. 1130 (Stabenow).** Democracy Day Act of 2005. Introduced May 26, 2005. Referred to the Committee on the Judiciary but not Rules and Administration.

**S. 1867 (Feingold).** Displaced Citizens Voter Protection Act of 2005. Introduced October 7, 2005.

**S. 1975 (Obama).** Deceptive Practices and Voter Intimidation Prevention Act of 2005. Introduced November 8, 2005.

**S. 2166 (Lott).** Hurricane Election Relief Act of 2005. Introduced December 21, 2005; passed Senate February 9, 2006.

**S. 2350 (Johnson).** Fairness and Independence in Redistricting Act of 2006. Introduced March 1, 2006. Referred to the Committee on the Judiciary.

**S. 2507 (Warner).** National Defense Authorization Act for Fiscal Year 2007. Introduced April 4, 2006. Referred to the Committee on Armed Services.

**S. 2693 (Burns).** Fair and Accurate Representation Act of 2006. Introduced May 2, 2006. Referred to the Committee on Homeland Security and Governmental Affairs.

**S. 2703 (Specter).** Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006. Introduced May 3, 2006. Referred to the Committee on the Judiciary but not Rules and Administration. Reported July 19.

**S. 2766 (Warner).** John Warner National Defense Authorization Act for Fiscal Year 2007. Reported from the Committee on Armed Services May 9, 2006. Passed Senate June 22, 2006.

**S. 2767 (Warner).** Department of Defense Authorization Act for Fiscal Year 2007. Department of Defense Authorization Act for Fiscal Year 2007. Reported from the Committee on Armed Services May 9, 2006. Passed Senate June 22, 2006.

**S. 3828 (Inhofe).** National Language Act of 2006. Introduced August 3, 2006. Referred to the Committee on Homeland Security and Governmental Affairs.

**S. 3943 (Boxer).** Confidence in Voting Act of 2006. Introduced September 26, 2006.

**S. 4018 (Wyden).** Vote by Mail Act of 2006. Introduced September 29, 2006.

**S. 4034 (Reid).** Voter Suppression, Ballot Hacking, and Election Fraud Prevention Act. Introduced September 29, 2006. Referred to the Committee on the Judiciary.

**S. 4069 (Obama).** Deceptive Practices and Voter Intimidation Prevention Act of 2006. Introduced November 16, 2006.