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Elections Reform: Overview and Issues

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October 24, 2008

Abstract. Since the November 2000 Presidential election, previously obscure details of voting and vote counting have become the focus of ongoing public attention and legislative action at the state and federal levels. The Help America Vote Act (HAVA, P.L. 107-252) was enacted in October 2002, and states have made many changes to election laws and procedures before and since. HAVA created a new federal agency, set requirements for several aspects of election administration, and provided federal funding. However, it did not supplant state and local control over election administration. Issues in the 109th Congress included state compliance with HAVA requirements, voter identification and citizenship requirements for voting, funding, and paper audit trails for electronic voting systems. A similar set of issues has been considered in the 110th Congress. For FY2008, funding was provided by a consolidated appropriations act, which included \$16.5 million for the Election Assistance Commission and \$115 million for election reform grants to states, along with smaller amounts for other programs. The continuing resolution for FY2009 contained similar amounts. Several election-reform bills have been introduced, but none have been enacted.



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Elections Reform: Overview and Issues

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Summary

Since the November 2000 Presidential election, previously obscure details of voting and vote counting have become the focus of ongoing public attention and legislative action at the state and federal levels. The Help America Vote Act (HAVA, P.L. 107-252) was enacted in October 2002, and states have made many changes to election laws and procedures before and since. HAVA created a new federal agency, set requirements for several aspects of election administration, and provided federal funding. However, it did not supplant state and local control over election administration. Issues in the 109th Congress included state compliance with HAVA requirements, voter identification and citizenship requirements for voting, funding, and paper audit trails for electronic voting systems. A similar set of issues has been considered in the 110th Congress. For FY2008, funding was provided by a consolidated appropriations act, which included \$16.5 million for the Election Assistance Commission and \$115 million for election reform grants to states, along with smaller amounts for other programs. The continuing resolution for FY2009 contained similar amounts. Several election-reform bills have been introduced, but none have been enacted.

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Voting Systems and Election Administration

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

Voting Systems

Currently, most jurisdictions use optical scan, direct recording electronic (DRE) systems, or both. There is no consensus on whether any one technology is best, although use of optical scan and DRE systems has been increasing for several years. States have different practices and requirements. HAVA does not require any particular voting system, but it sets requirements that influence what systems election officials choose. Systems used in federal elections must provide for error correction by voters, manual auditing, accessibility, alternative languages, and error-rate standards. Systems must also maintain voter privacy and ballot confidentiality, and states must adopt uniform standards for what constitutes a vote on each system.

Electronic Voting Machine Controversy

HAVA's requirement for accessible voting systems (at least one per polling place) and other factors drove some states to adopt DREs, but controversy exists about the security of those systems. Some experts and advocates believe that the problem is serious enough to require that all voting systems produce paper ballots that can be verified by voters and that will serve as the official record of the votes for any recount. Others believe that other safeguards can make DREs sufficiently safe from tampering, that use of printed paper ballots would create too many problems, and that the controversy risks drawing attention away from the demonstrated utility of DREs in addressing problems of access to and usability of voting systems. HAVA requires a paper audit trail for the voting system, but not paper ballots. However, many states have instituted paper-ballot-trail requirements.

Several bills introduced in recent Congresses would address this issue (see CRS Report RL33894, *Election Reform: Issues and Legislative Proposals in the 109th Congress*, and CRS Report RL32526, *Electronic Voting Systems (DREs): Legislation in the 108th Congress*). Most would require a specific design standard for paper ballots rather than setting a performance standard that can be met in different ways, which was the approach taken by HAVA with respect to voting system requirements. Proponents of paper ballots argue that a legislated design standard is the only way to ensure that voting systems exhibit the desired level of verifiability and security. Opponents argue that such a design standard freezes technology and stifles innovation, thereby precluding the development and implementation of technologies with superior levels of verifiability and security than is possible with current technology. See CRS Report RL33190, *The Direct Recording Electronic Voting Machine (DRE) Controversy: FAQs and Misperceptions*.

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Federal Funding

A central issue has been the role of the federal government in addressing concerns about voting systems, particularly with respect to funding and standards. HAVA authorized \$3.86 billion in funding for programs to replace equipment, improve election administration, improve accessibility, recruit pollworkers, and perform research and pilot studies. (See “Funding Under the Help America Vote Act” below.)

Election Assistance Commission

Before HAVA, federal activities relating to election administration were performed by the Office of Election Administration (OEA) of the Federal Election Commission (FEC). Other than the voluntary voting system standards, OEA performed clearinghouse functions and some administrative activities under the National Voter Registration Act (P.L. 103-31). HAVA replaced the OEA with the Election Assistance Commission (EAC, <http://www.eac.gov>), an independent, bipartisan federal agency. The act also established two boards, with broad-based state and local membership, and a technical committee, to address aspects of voting system standards and certification. The statute also provides for technical support and participation by the National Institute of Standards and Technology (NIST, see <http://vote.nist.gov/>). The EAC carries out grant programs, provides for testing and certification of voting systems, studies election issues, and issues voluntary guidelines for voting systems and guidance for the requirements in the act. The EAC has no rule-making authority (except for limited authority under the National Voter Registration Act of 1993, the “motor-voter” law) and does not enforce HAVA requirements. The act established two enforcement processes: the U.S. Attorney General may bring civil action with respect to HAVA requirements, and states, as a condition for receipt of funds, were required to establish administrative grievance procedures to handle complaints from individuals.

Standards and Requirements

In the 1980s, the FEC developed voluntary standards for computer-based voting systems. Most states have now adopted those standards, which were updated in 2002. HAVA codifies the development and regular updating of those standards, which it calls voluntary guidelines. The EAC issued draft guidelines for public comment in June 2005. The final version took effect in December 2007. A new, completely rewritten draft version was released for public review in October 2007. See CRS Report RS21156, *Federal Voting Systems Standards and Guidelines: Congressional Deliberations*; and CRS Report RL33146, *Federal Voluntary Voting System Guidelines: Summary and Analysis of Issues*. HAVA also establishes federal requirements for voting systems, registration, provisional ballots, and other aspects of election administration. It leaves the methods of implementation to the states but requires the EAC to issue voluntary guidance. See CRS Report RL32685, *Election Reform: The Help America Vote Act and Issues for Congress*.

Voter Identification

The Help America Vote Act of 2002 (HAVA, P.L. 107-252) requires that certain voters who had registered by mail present a form of identification from a list specified in the act. States vary greatly in what identification they require voters to present, ranging from nothing beyond the federal requirement to photographic identification for all voters. A number of states enacted laws

in recent years to require photo ID to vote, which resulted in a series of state court challenges and rulings. In the 109th Congress, the House passed legislation to require photo identification and proof of citizenship when voting in federal elections, but no further action followed. The U.S. Supreme Court has upheld an Indiana statute requiring photo identification for voting. See CRS Report RS22882, *The Constitutionality of Requiring Photo Identification for Voting: An Analysis of Crawford v. Marion County Election Board*.

Funding Under the Help America Vote Act

HAVA established several grant programs (see table below for authorized and appropriated amounts):

- *Election Administration Improvements*. Provided expedited, one-time formula payments for general election administration improvements to states that applied, with a \$5 million minimum combined payment per state for this and the replacement program (see next paragraph). Administered by General Services Administration (GSA). (Sec. 101.)
- *Replacement of Punchcard and Lever Machine Systems*. Provided expedited, one-time formula payments to replace punchcard systems and lever machines in qualifying states, with a \$5 million minimum combined payment per state for this and the improvements program, summarized above. Administered by GSA. (Sec. 102.)
- *Payments to Meet Election Requirements*. Provides annual formula payments to states to meet the act's requirements. Requires a 5% match and submission of a state plan. Administered by the Election Assistance Commission (EAC) created in the act. (Sec. 251-258.)
- *Payments to Assure Accessibility*. Provides payments to states to make polling places accessible to persons with disabilities. Requires application. Administered by Department of Health and Human Services (HHS). (Sec. 265-265.)
- *Payments for Protection and Advocacy Systems*. Provides payments to state protection and advocacy systems to ensure electoral participation by persons with disabilities. Requires application. Administered by HHS. (Sec. 291-292.)
- *Grants for Research and Pilot Programs*. Provides grants for research to improve voting technology (Sec. 271-273) and for pilot programs to test new voting technology (Sec. 281-283). Requires application. Administered by EAC.
- *Student Programs*. Establishes three programs, one to recruit college students as pollworkers (Sec. 501-503), one to recruit high school students (Sec. 601), and one to provide grants for the National Student and Parent Mock Election (Sec. 295-296).

Appropriations

The FY2003 omnibus appropriations bill (H.J.Res. 2, H.Rept. 108-10, P.L. 108-7), signed into law on February 20, 2003, contained \$1.5 billion for election reform programs authorized by HAVA, including \$650 million combined for the election administration improvement and voting

system replacement payments to be administered by GSA (with no specific allocation designated for either program and a maximum of \$500,000 for administrative costs). GSA disbursed all of these funds to states in June 2003. All states and territories received payments for election administration improvements, based on a formula using each state's voting-age population, and payments to replace punch card and lever voting systems were made to all states that applied. Also included was \$830 million for requirements grants (with a maximum of 0.1% to be paid to any territory), and \$20 million for other programs—\$13 million for accessibility grants, \$2 million for protection and advocacy programs, \$1.5 million each for the college and high school programs, and \$2 million for the EAC. P.L. 108-7 also included \$15 million for one-time payments to certain states that had obtained optical scan or electronic voting systems prior to the November 2000 election.

The President's budget request for FY2004 included \$500 million, one-half the amount authorized, to fund EAC requirements grants and administration. No funds were specifically requested for the other programs described above. The final omnibus appropriations bill, H.R. 2673, signed into law on January 23, 2004 (P.L. 108-199), contained just over \$1.5 billion for election reform, including \$1.0 billion for requirements payments, \$500 million for election reform programs, \$10 million for accessibility grants, \$5 million for protection and advocacy systems, and \$1.2 million for the EAC.

For FY2005, the President's budget request included \$65 million for election reform, of which \$40 million was additional funding for requirements grants and \$10 million was for EAC administrative expenses. The request also included \$5 million for protection and advocacy programs and \$10 million for accessibility grants. The omnibus appropriations bill for FY2005, H.R. 4818 was signed into law on December 8, 2004, and included \$14 million for the EAC, of which \$2.8 million was to be transferred to NIST, and \$15 million for disability voting access, with \$5 million of that amount to apply to protection and advocacy systems. Also included was \$200,000 for the student parent mock election program and \$200,000 for the Help America Vote College Program.

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

The FY2007 request included \$16.9 million for the EAC (\$5 million for NIST), \$4.83 million for protection and advocacy programs, and \$10.89 million for accessibility grants administered by HHS. The 109th Congress adjourned without enacting an appropriations measure, providing instead temporary funding until February 15, 2007, via a continuing resolution (H.J.Res. 102). Continued funding through September 30 for FY2007 was subsequently provided via another continuing resolution, H.J.Res. 20, which was signed by the President on February 15 (P.L. 110-5). It provided \$16.24 million for the EAC, of which \$4.95 million was for NIST, \$4.83 million for protection and advocacy programs, and \$10.89 million for disability access.

The FY2008 request included \$15.5 million for the EAC (\$3.25 million for NIST), and \$4.83 million for protection and advocacy programs and \$10.89 million for accessibility grants administered by HHS. From the start of FY2008 until December 31, 2007, continued funding for the EAC was provided by a series of continuing resolutions. Ultimately, FY2008 funding was

provided by the Consolidated Appropriations Act for 2008, enacted on December 16, 2007 (P.L. 100-161). It provided \$16.53 million for the EAC, of which \$3.25 million is for NIST, and \$200,000 is for the high school mock election program. It also provided \$115 million for requirements payments, \$10 million for data collection grants to selected states, \$4.83 million for protection and advocacy programs, and \$12.37 million for disability access.

The FY2009 request included \$16.68 million for the EAC (with \$4 million for NIST), as well as \$5.26 million for protection and advocacy programs and \$12.15 million for accessibility grants administered by HHS. The FY2009 appropriations were provided in a continuing resolution (P.L. 110-329), which provided the same funding levels as FY2008.

State Implementation of the Help America Vote Act

With the publication of state plans in the *Federal Register* on March 24, 2004, states and territories were eligible to receive \$2.3 billion in federal requirements payments, following a 45-day public comment period and filing of a certification with the EAC. The \$2.32 billion included funds appropriated in FY2003 and FY2004 which could not be allocated until establishment of the EAC and publication of the state plans. The EAC distributed all of that funding to states by December 2005; no additional funding for requirements payments was appropriated until FY2008.

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

Budget Item	HAVA Auth. ^a	Appropriations							
		2003	2004	2005	2006	2007	2008	2009	Total
Payments to States									
Election Administration Improvement	325								
Punchcard/Lever Machine Replacement	325	650 ^b							650
HAVA Requirements	3,000	830	1,498				115	115	2,558
One-Time Payment ^c		15							15
Total Payments	3,650	1,495	1,498				115	115	3,223
Election Assistance Commission (EAC)									
General ^d	30.0	2.0	2.0	10.7	11.3	11.3	23.1 ^g	23.1 ^g	83.5
NIST				2.8	2.8	5.0	3.3	3.3	17.2
College Program	5.0 ^e	1.5	0.8	0.2	0.0 ^f				2.5
High School Program	5.0 ^e	1.5	0.8						2.3

Budget Item	HAVA Auth. ^a	Appropriations							
		2003	2004	2005	2006	2007	2008	2009	Total
Mock Election	0.2 ^e		0.2	0.2			0.2	0.2	0.8
Research	20.0								
Pilot Programs	10.0								
Total EAC	70.2	5.0	3.7	13.9	14.1	16.2	26.5	26.5	106
Health and Human Services (HHS)									
Accessibility	100	13.0	10.0	9.9	10.9	10.9	12.4	12.4	79.5
Protection and Advocacy	40 ^e	2.0	5.0	5.0	4.8	4.8	5.4	5.4	32.4
Total HHS	140	15.0	15.0	14.9	15.7	15.7	17.8	17.8	112
Total HAVA	3,860	1,515	1,517	29	30	32	159	159	3,441

Source: CRS, from HAVA and relevant appropriations acts.

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

- a. Authorization amounts in HAVA.
- b. Appropriated amount did not specify the distribution of funds between the two budget items.
- c. For payments to states that had obtained optical scan or DRE voting systems prior to the November 2000 election.
- d. Figures in this row are funds remaining in EAC line items after amounts for other specific items (such as NIST) are subtracted.
- e. Listed amounts plus sums necessary for subsequent years beyond the initial authorization period.
- f. Congress appropriated no funds for this in FY2006 but “encouraged” the EAC to spend \$250,000 on it.
- g. This includes \$10 million for grants of \$2 million each to 5 states to improve the collection of election data.

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