

Congressional Research Service

Overview and Implementation of the Help America Vote Act
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The October 2002 enactment of the Help America Vote Act, or HAVA ([P.L. 107-252](#), [H.R. 3295](#)), may be remembered as a turning point with respect to the nation's election systems. After the widespread problems that occurred in the November 2000 election, Congress, the states, and various commissions examined election procedures, voting technologies, whether national standards are necessary, and the federal role in the election process. Historically, elections in the United States have been administered at the state and local level, and the federal government has not previously set mandatory standards for voting systems or provided funding for the administration of elections. [P.L. 107-252](#) creates a new federal agency with election administration responsibilities, sets requirements for voting and voter-registration systems and certain other aspects of election administration, and provides federal funding, but it does not supplant state and local control over election administration. Appropriations for election reform have included \$1.5 billion each year for FY2003 ([H.J.Res. 2](#), [P.L. 108-7](#)) and FY2004 ([H.R. 2673](#), [P.L. 108-199](#)). Issues for the 2nd session of the 108th Congress may include funding, ramping up of EAC activities, and implementation by, and impacts, on the states, including the security of electronic voting.

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Funding

Programs

The act establishes several grant programs (see table below for authorized amounts):

Election Administration Improvements. Provides expedited, one-time formula payments for general election administration improvements to states that apply, with a \$5 million minimum combined payment per state for this and the replacement program below. Administered by General Services Administration (GSA). (§101.)

Replacement of Punchcard and Lever Machine Systems. Provides expedited, one-time formula payments to replace punchcard systems and lever machines in qualifying states, with a \$5 million minimum combined

payment per state for this and the improvements program above.
Administered by GSA. (§102.)

Payments to Meet Election Requirements. Provides annual formula payments to states to meet the Act's requirements. Requires a 5% match and submission of a state plan. Administered by the Election Assistance Commission (EAC) created in the Act (see below). (§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). (§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. (§291-292.)

Grants for Research and Pilot Programs. Provides grants for research to improve voting technology (§271-273) and for pilot programs to test new voting technology (§281-283). Requires application. Administered by EAC.

Student Programs. Establishes three programs, one to recruit college students as pollworkers (§501-503), one to recruit high school students (§601), and one to provide grants for the National Student and Parent Mock Election (§295-296).

Funding Authorizations in the Help America Vote Act (HAVA)

Program	Authorizations (\$millions) per Fiscal Year					Actual ^b
	2003	2004	2005	2006	Total	FY03-05 Total
Election Administration Improvement	325.0				325.0	325.0
Punchcard/Lever Machine Replacement	325.0				325.0	325.0
Election Requirements	1400.0	1,000.0	600.0		3000.0	2368.3
Accessibility	50.0	25.0	25.0		100.0	33.0
Protection and Advocacy	10.0	10.0	10.0	10.0	40.0+	12.0
Research	20.0				20.0	0.0
Pilot Programs	10.0				10.0	0.0
College Program	5.0	a	a	a	5.0+	2.25

High School Program	5.0	a	a	a	5.0+	2.25
Mock Election	0.2	a	a	a	0.2+	0.2
EAC	10.0	10.0	10.0		30.0	14.0
Total	2,160.2	1,045.0	645.0	10.0	3860.2+	3,082.0

a: sums necessary.

b: funds appropriated for FY2003 and FY2004, plus the Administration request for FY2005.

+: amount shown plus sums necessary for subsequent years.

Appropriations

FY2003. The FY2003 omnibus appropriations bill (H.J.Res. 2, H.Rept. 108-10, P.L. 108-7), signed into law on February 20, included \$1.5 billion (see conference report excerpt) for election reform programs authorized in P.L. 107-252, 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),
- \$830 million for requirements grants (with a maximum of 0.1% to be paid to any territory),
- \$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 states that had obtained optical scan or electronic voting systems prior to the November 2000 election.

The General Services Administration (GSA) disbursed all §101 (election administration improvements) and §102 (replacement of punch card and lever machine systems) 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. Payments for the replacement of punch card and lever voting systems were made to all states that applied for the program. Total disbursements for both programs were \$649.5 million. Requirements grants to be administered by the recently appointed EAC have not yet been distributed.

It has not been determined whether the \$2 million in FY2003

administrative funds will be available for the EAC to use. The EAC commissioners were not confirmed until December 2003 (see below), after FY2003 had ended. Unlike requirements grant appropriations, those for EAC operations are not designated by HAVA as being available until expended, and unobligated funds would ordinarily revert to the Treasury at the end of the fiscal year (see CRS fact sheet). However, the FY2004 appropriations bill funding the EAC had not yet been enacted (see below) at the time the commissioners were sworn in, and covered agencies were operating under a continuing resolution. Since EAC nongrant funding for FY2004 is one-fifth the authorized level, some observers believe that the FY2003 funds should also be made available.

FY2004. 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 to be administered by the EAC or HHS, or for election reform activities of the National Institute of Standards and Technology (NIST) specified by HAVA. Funding below authorized levels raised concerns among some observers about unfunded mandates or failure to resolve problems with voting systems that were identified in hearings and by the various commissions and task forces that produced recommendations after the November 2000 election. However, most requirements in the Act do not go into effect immediately (see below).

The FY2004 Transportation, Treasury, and Independent Agencies Appropriations Act, H.R. 2989, as passed by the House on September 20, 2003, included \$495 million for grant programs authorized under HAVA and \$5 million for the EAC (see also excer pt from H.Rept. 108-243). The Senate version, S. 1589, reported by the Senate Appropriations Committee on September 8 (S.Rept. 108-146; see ex cerpt), provided \$500 million, of which not more than \$800,000 was to be used for EAC administrative expenses. During floor consideration of the bill on October 23, the Senate adopted an amendment providing \$1.5 billion for grants to improve election technology and administration under HAVA (CR: S13106-S 13112).

The omnibus appropriations bill, H.R. 2673, includes a total of \$ 1,516,200,000 for election reform. The omnibus bill includes the conference version of the Transportation, Treasury, and Independent Agencies Appropriations Act (found in Division F), an additional \$1.0 billion for requirements grants (found in Division H, "Miscellaneous Appropriations and Offsets"), and \$15 million for election-related programs in the Department of Health and Human Services (Division E), as follows:

- \$1.4983 billion for requirements payments,
- \$10 million for accessibility grants,
- \$5 million for protection and advocacy systems,
- \$750,000 each for the college and high school programs,
- \$200,000 for the Mock Election program, and
- \$2 million for the EAC, including \$800,000 for the Office of Election

Administration that the EAC replaces (see below).

No funding was specifically provided for National Institute of Standards and Technology support for EAC activities under §221 and §231 of HAVA.

The House approved the conference report to H.R. 2673 on December 8, 2003 (by a vote of 242-176), while the Senate adjourned without acting on it. The Senate approved the conference report on January 22, 2004 (by a vote of 65-28), and the President signed the bill into law (P.L. 108-199) on January 23.

FY2005. The President's budget request for FY2005 includes \$65 million for election reform, of which \$40 million is additional funding for requirements grants and \$10 million is for EAC administrative expenses. The request also includes \$5 million for protection and advocacy systems and \$10 million for disability access grants, administered by the Department of Health and Human Services.

The combined total appropriations for election reform for fiscal years FY2003-2005 (assuming funding at the requested level for FY2005) is approximately \$3.08 billion. The total authorization for FY 2003-2005 is approximately \$3.85 billion (see table above).

Election Assistance Commission

The Act establishes a new federal agency, the Election Assistance Commission (EAC), to replace the Office of Election Administration (OEA) of the Federal Election Commission and also to perform new functions. The EAC is authorized for three fiscal years. Members are appointed to four-year terms and may be reappointed once. The statutory deadline for appointment of commissioners was February 26, 2003. The Act also establishes two boards, with broad-based state and local membership, and a committee to address aspects of voting system standards. The main duties of the EAC include carrying out grant programs, providing for testing and certification of voting systems, studying election issues, and issuing voluntary guidelines for voting systems and the requirements in the Act. The commission will not have any new rulemaking authority. The Act provides for technical support and participation by the National Institute of Standards and Technology in relevant commission activities. (§201-247.)

HAVA calls for the appointment of commissioners by the President, with the advice and consent of the Senate. In May 2003, Democratic leaders recommended Ray Martinez and Gracia Hillman for appointment to Democratic positions with the EAC. President Bush announced his intention on June 6 to nominate Paul DeGregorio and Deforest B. Soaries to Republican slots on the commission. On October 3, the President formally nominated DeGregorio, Hillman, Martinez, and Soaries to be commissioners. The Senate Committee on Rules and Administration held an October 28 hearing on the nominations. The Senate confirmed the nominees by voice vote on December 9 and all were sworn in by the end of December. Commission members reportedly met in a private session on January 5. Commissioner Soaries was appointed chairman.

At its first meeting on March 23, the EAC announced that the General Services Administration would bear the cost of publishing state plans in the Federal Register, a requirement that had delayed providing \$2.3 billion in funds to the states. The plans were published in the Register on March 9 and HAVA required a 45-day public comment period before funds could be disbursed. GSA is expected to begin making payments to each of the states and territories sometime in mid-June. The EAC convened a hearing on the security and reliability of electronic voting equipment in Washington, D.C. on May 5; a second hearing on optical scan, lever, and punch card voting systems and provisional voting was held in Chicago on June 3.

Issues

Because the EAC is a new agency with more complex responsibilities and structure than the OEA that it replaces, issues are likely to arise with respect to its establishment and the implementation of its programs. One question is how time frames (see [Implementation Time Line](#)) and responsibilities established in the Act will be met, especially given concerns about enactment of EAC appropriations.

Election Technology and Administration Requirements

Voting Systems

Beginning January 1, 2006, voting systems used in federal elections must provide for error correction by voters, manual auditing, accessibility to disabled persons, alternative languages, and federal error-rate standards. Systems must also maintain voter privacy and ballot confidentiality, and states are required to adopt uniform standards for what constitutes a vote on each system (for details, see [Section-by-Section Summary](#)). (§301.)

Provisional Voting

Beginning January 1, 2004, any voter not listed as registered must be offered and permitted to cast a provisional ballot. Voter information must be posted at the polling place on election day, and any ballots cast during a court-ordered extension of polling hours must be provisional. (§302.)

Voter Registration

Beginning January 1, 2004 (extendable to 2006), states using voter registration must employ computerized, statewide voter registration systems that are accurately maintained. First-time voters who register by mail must provide specified identification beginning January 1, 2003. (§303.)

Other Provisions

The Act allows states to establish stricter requirements than those listed and gives states discretion to choose the methods of implementation. (§304-305.)

Voluntary Guidance

The Act requires that the EAC develop voluntary guidance to assist states in meeting the above requirements, and that it perform quadrennial updates. (§311-312.)

Enforcement

The Act establishes two enforcement processes. The U.S. Attorney General may bring civil action with respect to the above requirements, and states, as a condition for receipt of funds, are to establish administrative procedures to handle complaints from individuals. (§401-402.)

Issues

Among the many potential issues associated with the requirements and related provisions, three are likely to be central:

- Will federal funding be sufficient to keep the requirements from becoming unfunded mandates and to resolve the problems identified?
- How can implementation be accomplished with a minimum of problems? For example, a change in voting system may lead to an initial increase in spoiled ballots in the absence of sufficient training of pollworkers and voter education.
- How well will implemented requirements meet the goals of the legislation? For example, what will be the impact of requirements on reducing opportunity for fraud and on voter turnout?

Security of Electronic Voting Systems. Some concerns have also been raised about the security of electronic voting systems (DREs) being adopted in several states. Some observers believe that the systems are not sufficiently protected from unauthorized modification, whereas others believe that existing procedures are sufficient to protect the systems from exploitation of any weaknesses (see [CRS Report RL32139](#)). Some states are requiring that DREs also produce voter-verifiable paper ballots as an additional security measure, but the effectiveness of that approach is in dispute. Security concerns have also been raised about [Internet voting](#), and an experimental program for military and overseas voters to be run by the Department of Defense has been suspended for the 2004 elections.

Military and Overseas Voters

The Act requires the Secretary of Defense to establish procedures that

provide time and resources for voting action officers (the individuals who are responsible for providing voting information and assistance) to perform their duties; to make efforts to ensure that absentee ballots are postmarked; and it requires secretaries of the armed forces to take steps to provide relevant voting information to members of the military and their dependents, including timely notice of when ballots are likely to reach their destination. Each state will need to designate a single office to provide information to military and overseas voters on absentee registration and voting, and each state is required to report statistics on absentee ballots sent and received. Absentee ballot applications for military and overseas voters will be valid for the two subsequent general election cycles for federal office. States are required to use a standard oath if the state requires an oath or affirmation for voting materials. A state may not refuse to process a voter registration or absentee ballot application from a military or overseas voter because it is submitted before the state processes applications for that year. If a voter registration or absentee ballot application is rejected, the state must notify the voter of the reason for the rejection. (§701-707.) (See also Military and Overseas Voting.)

Other Provisions

Recipients of grants or payments are required to keep records that would facilitate an audit, and all funds under the Act are subject to a mandatory audit by the Comptroller General at least once. Clarifies the ability of election officials to remove registrants from the list of registered voters under the National Voter Registration Act of 1993 (P.L. 103-31). The Attorney General is required to conduct a review of existing criminal statutes to determine whether they are adequate with respect to using the Internet for voting; the Attorney General is required to submit a report to Congress. Individuals who provide false information with respect to either registration or voting, or conspire to do so, will be fined, imprisoned, or both, in accordance with existing voting rights laws. (§901-906.)