

# Congress considers election laws

*Bills before Congress to address election laws would mandate big changes for states.*

**BY DAVE SCOTT**

**M**any states are likely to have to change their election-administration laws and voting equipment when Congress finally agrees on measures designed to address the controversy that followed the last presidential election. Both the House and Senate measures require statewide voter registration systems, which do not exist now in most states.

While there have been many studies of the election administration process by a host of groups, federal legislation had not been completed as of mid-March. This article reviews the House and Senate bills, with the understanding that 1) the Senate's legislation is not completed and 2) the House and Senate bills will go to a joint House-Senate conference committee prior to final action by either chamber. Only a fool would predict the results of a House-Senate conference committee on a charged issue such as election law, but statements made by members of Congress about the importance of this issue presumes they are likely to act prior to the end of the 107th Congress.

## House passes its bill

The House passed HR 3295 by a wide margin in December 2001. The Help America Vote Act of 2001 breaks out as follows:

The act creates a new federal commis-



*Congress is examining bills that would greatly change the way states hold elections.*

sion consisting of four members appointed by the president with consent of the Senate. The Election Assistance Commission would have the power to hold hearings and develop voluntary election standards, but it would not promulgate regulations.

The new commission would take over many responsibilities housed within the Office of Election Administration under the Federal Election Commission. General consensus among election administration officials is that Members of Congress are more likely to support the new commission if it is a separate entity from the FEC.

The new commission would develop and update voluntary standards for election systems; maintain a clearinghouse on election administration practices; develop accessibility guidelines for voting and ensure the rights of overseas military voters.

State officials would have the opportu-

nity to participate in two boards to provide the new commission with technical and policy advice. A technical standards development committee housed elsewhere would provide input on standards for voting equipment.

Four grant programs would be available to states. One would provide funds to "buy out" punch card equipment (the federal government would pay 90 percent to 95 percent of the cost to replace the kind of equipment used in Florida that led to the national recognition of the meaning of "chad") and grants for research on voting technology.

A new Election Administration Fund would be the primary source of grant funding for states. States could use funds for a variety of purposes including improving equipment, recruiting poll workers and other activities designed to improve voting. The grants would require

a 25 percent match and include provisions limiting eligibility of states (for example in order to be eligible, the state must have at least one voting system and/or machine in each polling place that is fully accessible to people with disabilities).

Finally, each state – separate from the grant-eligibility requirements – must certify that it is in compliance with a variety of federal mandates relating to voting law. For instance, a state must certify that it has enacted legislation to enable implementation of a statewide registration system, networked to all local jurisdictions, and that the state permits provisional voting or an alternative so that people can cast a ballot pending resolution of their eligibility to do so.

States that do not comply with the list of requirements will be subject to action brought by the Department of Justice, but the bill is silent on penalties.

### Senate unable to reach consensus

The Senate set aside its bill (S. 565) on March 4 because supporters were unable to obtain the votes necessary to close debate on the legislation (known as a “cloture vote”) and bring it to the body for a vote on the text.

The Senate considered and added to the bill a variety of amendments (visit [www.constitutionproject.org/eri/index.htm](http://www.constitutionproject.org/eri/index.htm) for a comprehensive listing and analysis). A proposal purportedly designed to prevent voter fraud was the sticking point that kept the legislation from a successful cloture vote.

Specifically, some Republican members want individuals who register to vote by mail to show identification at the polling place. Some Democrats have opposed the measure on equal protection grounds, arguing that many voters may not have the type of identification required, such as a utility bill showing they live where they claim to live.

Additionally, senators from Oregon (which holds elections entirely by mail) and Washington (which has a very high percentage of absentee voters who vote by mail) are concerned that such ID requirements will grossly alter their process for elections. The states are seeking a waiver so they can keep a voting process that they consider effective.

During the debate on the Senate floor, U.S. Sen. Ron Wyden of Oregon expressed his view, and the view of other Northwestern senators, that mail balloting should be protected as a model, not destroyed by new federal legislation. While the legislation addresses voter fraud, the controversy surrounding the election in Florida did not turn on such issues, but instead on the effectiveness of certain equipment and on recount procedures mandated by state legislation.

While a partisan fight is taking place on the ID provisions, there also is wide-ranging agreement among members on many other provisions. The Senate legislation as it currently stands includes many similar provisions to the House legislation.

One shared provision requiring statewide voter registration systems would mandate major changes in state systems. A study released in March by the Constitution Project and Electionline.org shows that only 10 of the 50 states surveyed have unified statewide registration databases of the kind proposed in the House and Senate. A statewide system allows states to track changes in addresses among voters and to prevent duplications of voting registrations in different locations by the same individual. Such systems are expensive to develop. State election administrators say that if the House and Senate mandate a statewide system, it also will likely have to clarify who will have the responsibility for verifying the accuracy of voter lists. Currently, localities in many jurisdictions have responsibility for maintaining voting lists.

The Senate measure also would create an Election Administration Commission with many of the same responsibilities for sharing information and overseeing grant programs as its House counterpart. The Senate bill does not create advisory committees, however.

The Senate bill would provide grants in three general areas, including improving the accessibility of polling places, improving technology and an “incentive” grant program. Funds would be available to both states and localities, and one of the many amendments to the Senate legislation included a minimum amount for each state.

The Senate would locate its grant programs within the Department of Justice at first and then transfer grants to the new

commission when it is up and running. State election officials are concerned there would be no input from states to the attorney general, who would be responsible for establishing the “policies” under which the grant program would be based.

States would be required to meet specific guidelines for voting equipment, such as providing the voter with the opportunity to correct ballots before they are counted and mandating some form of provisional voting (procedures used to allow a person to cast a ballot in the event that an individual claims to be registered at a polling place but is not listed on the rolls on election day).

States receiving federal grant funding under the Senate bill would need to be in compliance by 2010 or be subject to a civil action.

### A caution

The House and Senate legislation is significantly more complex than outlined in this article. Members are encouraged to read the actual text of the legislation and discuss the potential impacts of this legislation with their senior state election official(s).

The House and Senate legislation is available on the Library of Congress Web site at <http://thomas.loc.gov>. To find the legislation, simply type in the bill numbers above. Additional sources of timely and nonpartisan information on the pending federal election administration is available on the Web site of the Constitution Project at [www.constitutionproject.org](http://www.constitutionproject.org) – follow the link to the Election Reform Initiative for House and Senate legislation comparisons and related studies, as well as position statements from state and local election groups. Members also can keep track of election issues at [www.electionline.org](http://www.electionline.org), a Web site maintained by the Election Reform Information Project funded by the Pew Charitable Trust. Electionline includes daily links to election activities around the nation. ★

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