

Legislative Bulletin.....October 10, 2002

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H.R. 3295—Help America Vote Act (Conference Report) (Ney)

Order of Business: H.R. 3295 passed the House on December 12, 2001, by a vote of 362-63 (<http://clerkweb.house.gov/cgi-bin/vote.exe?year=2001&rollnumber=489>). On April 11, 2002, the Senate passed the bill (amended) by unanimous consent. The conference report is now scheduled to be considered on the House floor on Thursday, October 10th.

Summary:

Anti-Fraud Provisions (Minimum Standards)

- Requires every individual who registers to vote to furnish a driver's license number or the last four digits of his or her Social Security number. If an individual lacks both numbers, the state would have to assign a unique identifier and make a determination of whether the information provided by such an individual is sufficient.
- Each state would be required to maintain a statewide voter registration system, which would assign each voter a unique ID number, and provide for data-sharing. (Effective January 1, 2004, with possibility of two-year extension)
- State election officials would be required to match the statewide voter registration database with the state's motor vehicle database.
- First-time voters who register by mail would have to provide proof of identity (copy of valid ID, bank statement, paycheck, utility bill, or some government document) at some point in the process: at the time of registration, when voting in person, or when voting by mail. (Effective January 1, 2004)
- Mail-in registration cards mandated by the Motor Voter Act would have to include check-off boxes regarding the registrant's age and citizenship. If the registrant fails to check the citizenship box, he or she would be notified and given the opportunity to complete the form.

- Voters who have not voted in two or more consecutive general elections for federal office and have not responded to a notice would be removed from their respective state's voter registration list.
- Voters who do not appear on a registration list or who are challenged about their identification, would be offered the opportunity to cast a provisional ballot. Such voters would sign an affidavit attesting that the voter believes he or she is registered and eligible to vote in that precinct under state law. If—and only if—the affidavit is verified, the ballot would be tabulated. (Effective January 1, 2004)
- Votes cast after the normal poll-closing time as the result of a court-ordered delay in closing would have to be cast provisionally and held separately from other provisional ballots. (Effective January 1, 2004)
- Conspiracy to deprive voters of a fair election would become a federal crime, as would providing false information in registering and voting.

Replacement of Punch Card Voting Machines and Election Administration Improvement

- Establishes a one-time, federal **replacement program for punch-card or lever voting machines**
- The Administrator of the General Services Administration (GSA) would make a payment to each eligible state or unit of local government that used a punch card or lever voting system to administer the regularly scheduled general election for federal office held in November 2000.
- The payment for each state would be equal to the number of qualifying precincts within a state times \$4,000.
- A state could only use such payment to replace its punch card voting system with a system that “does not use punch cards or levers.”
- Mandates that a state implement the replacement system in time for Election Day 2004 (subject to appeal for a two-year extension).
- If the deadlines are not met, the state would have to refund portions of the initial federal payment in proportion to the number of precincts failing to meet the deadlines.

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- Establishes a payment program for **improving the administration of elections**.
 - The Administrator of GSA would make a payment to each state for:
 - improving the administration of elections for federal office
 - educating voters on voting procedures
 - training election officials
 - improving, modifying, or acquiring voting systems
 - improving polling-place accessibility (including for those voters with disabilities and limited English proficiency)
 - establishing toll-free phone hotlines for voters to report fraud, get election information, and get information on their registration status
 - States could not use such funds for litigation or the payment of a judgment.
 - Funds would be distributed in proportion to each state's voting age population.
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- The Conference Report would authorize an aggregate of **\$650 million** in FY2003 to be appropriated for payments under the punch-card and administration improvement programs (\$325 million for each program). “Such sums as may be necessary” would also be authorized for the Administrator of GSA to administer the two payment programs above.

Election Assistance Commission

- Establishes a four-member **Election Assistance Commission** as an independent entity within the executive branch (members appointed by the President, subject to Senate confirmation).
- The Commission would be charged with serving as a “national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of federal elections.” Specifically, the Commission would be charged with carrying out the duties (described below) regarding voluntary election standards, election assistance, and the Help America Vote College Program. The Commission would have to submit various reports to Congress.
- The Commission could hold hearings (including the taking of testimony and the receipt of evidence) and secure necessary information directly from any federal department or agency.
- The Commission would be prohibited from issuing any rule, promulgating any regulation, or imposing any requirement on any state or local government unit.

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- The Conference Report would authorize not more than **\$10 million** for each of fiscal years 2003, 2004, and 2005 for the Commission to carry out its duties.

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- Establishes the 110-member Election Assistance Commission Standards Board and the 37-member Election Assistance Commission Board of Advisors, under the Election Assistance Commission
 - The Standards Board and the Board of Advisors would each review Commission recommendations regarding voluntary voting system guidelines, voluntary guidance under the requirements for states, and the best practice recommendations from the Commission.
 - Half of the members of the Standards Board would be chosen by the chief state election officials of each state (and district and territory), and half would be local election officials chosen by the states.
 - Two Standards Board members from the same state could not be of the same political party.
 - The powers of the two Boards are essentially the same as those for the Commission, except that Board members would serve without compensation (other than travel expenses and per diem).

Technical Standards

- Establishes the 15-member Technical Guidelines Development Committee, chaired by the Director of the National Institute of Standards and Technology, to assist the Executive Director of the Commission in developing the voluntary voting system guidelines discussed below. Committee members would serve without compensation (except for travel expenses and per diem).
- The Election Assistance Commission would provide for the “testing, certification, decertification, and recertification” of voting system hardware and software by accredited laboratories.
- The Commission would also have to make periodic studies available to the public regarding which types of voting technology (including voting machines, ballot designs, methods of voter registration, methods of ensuring total voter accessibility, methods of minimizing voter fraud, etc.) are the most convenient for voters, yield the most accurate, secure and expeditious voting system, are the least discriminatory, and are most cost-effective.
- The Commission, in consultation with the Department of Defense, would have to study and report to Congress and the President on the best practices for facilitating voting by absent uniformed services voters.
- The Commission would be required to conduct other studies regarding:
 - research into the human factor in election administration;
 - voters who register by mail;
 - the feasibility of using Social Security numbers to establish voting eligibility;
 - electronic voting; and
 - free postage for absentee ballots.

Election Assistance

- The Commission would make a “**requirements payment**” each year to each state that meets the necessary requirements (described below in the next section) for the year.
- Each state would get a requirements payment in proportion to its voting age population.
- Such payments could be reimbursements for costs incurred in obtaining approved voting equipment since the November 2000 election.
- A state could use such payment to implement the voting system standards identified below.
- States could not use such payments for litigation or the payment of a judgment.
- A state would NOT have to adopt the Commission standards in order to receive a requirements payment.
- In order to receive a requirements payment, a state would have to certify that:
 - it has authorized and appropriated **5%** of the total amount to be spent for meeting the voting system guidelines
 - it is in compliance with applicable federal voter-rights and voter-accessibility laws

- it has filed with the Commission a plan to distribute the requirements payments, establish an election fund in the state treasury, adopt voting system guidelines, and adopt performance goals
- it has filed with the Commission a plan for the implementation of uniform, nondiscriminatory administrative complaint procedures
- The specific choices on the methods of complying with the requirements for this payment would be left to the discretion of each state.
- The Commission could also make grants to states for research on voting technology improvements and implement pilot programs for the testing of voting equipment and technology.
- The Commission could make payments to states and localities for increasing polling-place access for disabled voters.
- Additionally, the Commission could make payments to states for protection and advocacy systems to ensure full electoral participation for the disabled at all points in the electoral process. Seven percent of each state's payment would be set aside for training and technical assistance.
- The Commission would be authorized to regularly make a payment (starting with \$200,000) to the National Student and Parent Mock Election, a national nonprofit organization that promotes voter participation.

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- The Conference Report would authorize:
 - an aggregate of **\$3.0 billion** for fiscal years 2003, 2004, and 2005 for Requirements payments to states (\$1.4 billion in FY2003, \$1.0 billion in FY2004, and \$0.6 billion in FY2005)
 - an additional **\$20 million** for FY2003 for Commission payments to states for research on voting technology improvements
 - an additional **\$10 million** for FY2003 for Commission pilot programs to test voting equipment and technology
 - an additional **\$100 million** over the FY2003-FY2005 period for payments to increase polling-place access for disabled voters (\$50 million in FY2003, \$25 million in FY2004, and \$25 million in FY2005)
 - an additional **\$40 million** over the FY2003-FY2006 period for payments to states for protection and advocacy systems to ensure full electoral participation for the disabled (\$10 million each fiscal year)
 - and an additional **\$200,000** in FY2003 (plus such sums as may be necessary in the six subsequent fiscal years) for the National Student and Parent Mock Election.

State Election Voting System (Minimum) Standards

- Each voting system used in an election for federal office would have to meet the following requirements by January 1, 2006:
 - Permits a voter to verify his or her votes before casting the ballot
 - Allows a voter to change the ballot or correct errors before the ballot is cast (including by providing a replacement ballot)

- Gives a voter the opportunity to correct a ballot in which a voter has voted for more than one candidate for a single office
- Produces a (permanent paper) record of each vote with an audit capacity
- Provides at least one voting system per polling place that is specially equipped for the disabled
- Provides alternative language accessibility
- Adopts uniform standards that define what constitutes a vote
- Each state would have to implement provisional voting, as detailed in the “anti-fraud provisions” section above.
- Additionally, each state would have to implement the provisions regarding voting after normal poll-closing time, a computerized statewide voter registration system, and voters who register by mail, as detailed above in the “anti-fraud provisions” section.
- Each state would have to implement a thorough program of registration file maintenance to remove ineligible voters (including removing registrants who have neither voted in two consecutive federal general elections nor responded to a notice).
- The specific choices on the methods of complying with the minimum election system standards would be left to the discretion of each state.
- The Election Assistance Commission would be charged with adopting voluntary guidance to assist states in meeting the required standards.
- The Attorney General could bring civil action against a state or other jurisdiction that fails to comply with these standards.

Help America Vote College Program

- Directs the Commission to establish the “Help America Vote College Program” to encourage college students to be poll workers and to encourage state and local governments to use the services of students participating in the Program.
- The Program would be aimed at making grants, placing student-targeted advertising, developing materials, sponsoring seminars and workshops, and taking other such actions to fulfill the Program’s purpose, as just described.

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- The Conference Report would authorize **\$5 million** for FY2003 and such sums as may be necessary for each succeeding fiscal year for the Help America Vote College Program.

Help America Vote Foundation

- Permanently establishes a federally chartered (charitable, nonprofit, nonpartisan, nongovernmental) corporation known as the Help America Vote Foundation to (in consultation with state election officials) encourage high school students to be poll workers, assign such students to polling places, and establish cooperative efforts with local election and education officials.

- The Foundation's 12-member Board of Directors would be appointed by Congress and the President and would serve without compensation (except for travel expenses and per diem).
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- The Conference Report would authorize **\$5 million** for FY2003 plus such sums as may be necessary for each succeeding fiscal year for the Help America Vote Foundation.

Military and Overseas Citizens' Voting Rights

- The Secretary of Defense would be tasked with implementing post-marking of absentee ballots mailed from any overseas location.
- The Secretary of each military department would be directed to inform members of the armed forces of the last date they could mail their absentee ballots and expect them to get to election officials in time. Further, each Secretary would be responsible for ensuring that members of the armed forces and their dependents have ready access to information regarding voter registration requirements and related information.
- Each state would be required to designate a single office to be responsible for providing information regarding voter registration and absentee ballot procedures to all absent uniformed services and overseas voters who wish to register to vote or vote in any jurisdiction in the state.
- States would have to report to the Commission on the number of absentee ballots transmitted to uniformed services voters and overseas voters and how many of such ballots were cast.
- Allows a single absentee ballot application from an absent uniformed services or overseas voter to suffice as an application for the next two regularly scheduled federal elections (including run-offs) in the state
- States could not refuse applications for absentee ballots on the grounds of early submission.
- Requires statistical analyses of voter participation for overseas and for absent uniformed services to be separately studied and reported by the presidential designee under the Uniformed and Overseas Citizens Absentee Voting Act

Miscellaneous

- All functions, property, records, and personnel of the Office of Election Administration (within the Federal Election Commission—FEC) would be transferred to the Election Assistance Commission upon the appointment of all members of the Election Assistance Commission.
- All recipients of funds under this legislation would be required to account for all funds received and all funds disbursed (subject to at least one mandatory audit).
- The references to "state" in this conference report include the District of Columbia, Puerto Rico, Guam, American Samoa, and the U.S. Virgin Islands.

Additional Background: To read the details of H.R. 3295 as it passed the House last year, please visit these two websites:

<http://www.house.gov/burton/RSC/electionreform.PDF>

<http://www.house.gov/burton/RSC/ElectionRefMgrsAmnd.PDF>

Cost to Taxpayers: Though no comprehensive cost estimate is available (because of the inclusion of several “such sums” provisions throughout the Conference Report), a totaling of the explicit authorizations yields the following (*in millions*):

<u>FY2003</u>	<u>FY2004</u>	<u>FY2005</u>	<u>FY2006</u>
\$2,160.2	\$1,045.0	\$645.0	\$10.0

Grand total of explicit authorizations over the FY2003-FY2007 period
(*not* including any estimate for “such sums”):
\$3,860.2 million

**Grand total of explicit authorizations
plus RSC estimate of “such sums” over the FY2003-FY2007 period:
\$3,902.0 million**

Does the Bill Create New Federal Programs or Rules?: Yes, as detailed in all the sections above.

Constitutional Authority: A statement of constitutional authority is not available.

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Motion to Instruct Conferees on FY03 DOD Authorization (H.R. 4546) (Taylor, Gene)

Order of Business: The motion to instruct conferees is expected to be voted on Thursday, October 10, 2002 as a privileged motion. The motion is in order because H.R. 4546 has been in a House-Senate Conference since July 26, 2002, and under House rules (clause 7(c)(1) of rule XXII) any motion to instruct is a privileged motion if a bill is in conference for more than 20 calendar days.

Summary: According to his statement on the House floor on October 9, 2002 (Congressional Record Page: H7306), Rep. Gene Taylor’s motion to instruct conferees will be on the issue commonly referred to as “concurrent receipt.” The effect of the motion would be to instruct House conferees to accept the Senate concurrent receipt

provision, which provides full and immediate concurrent receipt for military retirees with *any* disability rating.

The exact text of the motion is as follows:

Mr. TAYLOR of Mississippi moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendment to the Senate amendment to the bill H.R. 4546 be instructed to agree to the provisions contained in section 641 of the Senate amendment (relating to payment of retired pay and compensation to disabled military retirees).

Additional Information: Both the House- and Senate-passed DOD Authorization bills (H.R. 4546, S. 2514) contain provisions that would lift the longstanding prohibition on concurrent receipt (simultaneous payment) of Department of Defense retired pay (for veterans who served over 20 years) and Department of Veterans' Affairs disability benefits. Under current law, a veteran who is receiving disability pay has the amount of the disability payment deducted from his retirement pay. The House-passed bill would phase in partial concurrent receipt by providing both retirement and VA benefits for those with disability ratings of 60 percent or above by FY2007. The Senate-passed bill provides full concurrent receipt for military retirees with any disability rating in FY2003.

According to the Congressional Research Service (CRS), approximately 110,000 retirees could receive higher payments under the House-passed provision and about 700,000 under the Senate measure in FY2007 when both versions of concurrent receipt would be fully implemented. At that time, those eligible would receive an average annual benefit increase of about \$18,000 under the House provision and \$6,400 under the Senate provision. The largest individual benefits would go to those with the highest disability levels.

For Additional Information: CRS has a six-page backgrounder on concurrent receipt, including charts of the number of retirees affected, etc.
<http://www.congress.gov/erp/rs/html/RS21327.html>

Administration Views: The Bush Administration, in a June 19, 2002 Statement of Administration Policy (SAP) to the Senate (<http://www.whitehouse.gov/omb/legislative/sap/107-2/S2514-s.html>) and in a September 24, 2002 letter to Senator Levin, has threatened to veto a bill that includes either the Senate or the House version of concurrent receipt. The September 24, 2002 letter stated:

“It does not appear necessary to offer such broad authority to address what may be a quite limited number of cases where hardship may exist. The provision under consideration would cost nearly \$60 billion over ten years and could increase the number of veterans seeking benefits by 690,000. This would divert critical resources away from the war on terrorism, the transformation of our military capabilities, and important personnel programs such as pay raises and facilities improvements.”

The June SAP noted that the Administration objects to establishing a precedent that would allow beneficiaries to receive more than one type of benefit stemming from the same period of service, that the “current deficit projections necessitate strict adherence to fiscal discipline to ensure the quickest return to a balanced budget,” and that the cost of this provision would have an impact “that would necessarily require tradeoffs with war fighting capabilities.”

Cost to Taxpayers: While the motion itself has no cost, if conferees accepted the Senate-passed provision, and if the President signed the provision into law, **CBO estimates that implementing the Senate concurrent receipt provision (section 641) would cost \$4.3 billion in FY2003 and \$61.2 billion over 10 years** whereas CBO estimates the House-passed provision would cost \$1.1 billion in FY2003 and \$24.8 billion over the next 10 years.

Does the Bill Create New Federal Programs or Rules?: The motion to instruct is not binding on the conferees but merely a sense of the House regarding what House conferees should be agreeing to in House-Senate negotiations.

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