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## **The Vermont Legislative Research Shop**

### **Election Issues**

#### **Summary**

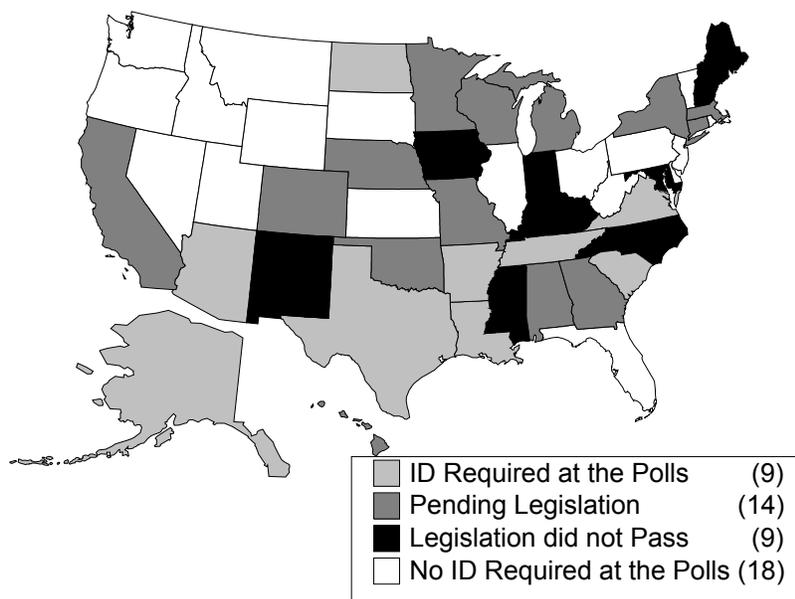
Over 1,700 bills have been introduced in 2001 to reform election procedures in the states. This does not include bills addressing campaign finance reform or the initiative and referendum process. Every state has election reform legislation this year. Some of the states with the most reform proposals are Hawaii, Massachusetts, Mississippi, New Jersey, New York, Texas, Virginia, and Washington. All of these states considered over 50 election reform bills this past year (National Conference of State Legislatures, 2002).

By far the most common subject of these bills is the establishment of task forces, study commissions, and interim committees. At least 58 bills proposing studies of election laws have been proposed in 22 states. The intense media and public scrutiny of election laws that has gone on since the drawn-out presidential election in 2000 has clearly placed pressure on legislatures to act, and taking the time to study the situation is a pragmatic first step. Some of the studies are broad in nature, looking at election procedures as a whole. Others focus on more specific areas, including: Internet voting, voting systems, technology increasing voter turnout, registration processes, recount procedures, training for poll workers, and preventing fraud (National Conference of State Legislatures, 2002).

A few states have considered sweeping election reform bills. These bills encompass everything from registration procedures to announcing election results, and everything in between. Most bills, however, focus on narrower topics. They tend to reflect problems that were highlighted in the 2000 elections, or are modeled after successful programs in other states. These include: absentee voting, ballot design/candidate rotation/party designation, modernizing voting equipment, standards for counting votes, restricting exit polling, modifying the electoral college, training and increasing the salary for election officials, registration procedures, restoring the voting rights of convicted felons, requiring voter ID at the polls, alternative voting methods, internet voting, mail ballots, and voter education (National Conference of State Legislatures, 2002).

## Voter Identification

Currently fourteen states have enacted laws that require people to show their ID at the election booth before voting in order to correctly verify their identity thus allowing them to vote. Sixteen states have pending legislation in the 2002 legislative session, while eleven states have failed legislation in the 2002 session. The Governor of New Hampshire vetoed a bill that was passed by the House and Senate in 2002 requiring ID at voting polls (Figure 1).



**Figure 1: ID Requirements at the Polls**

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## Absentee Balloting

Twenty-one states allow all registered voters to cast an absentee ballot for any reason. However, in a handful of states one must submit a valid reason to vote absentee; these can be reasons such as a disability or illness, travel, military, school, employment, non-felony incarceration, and religious reasons. While almost anybody can vote absentee, 26 of the states require the voter to personally to request an absentee ballot (Figure 2). In the other half of the states, agents of the voter can request an absentee ballot. These agents can be a parent, guardian, spouse, or

caretaker. The Federal Election Committee (FEC) estimates that roughly 35% of the states require the absentee ballot to be notarized while another 18% require an official notarization only if the voter is disabled or unable to sign (Federal Elections Commission, 2002).



**Figure 2: Absentee Ballot Requests**

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Currently 26 states have pending legislation dealing with absentee ballots. The current pending legislation in Alaska is to approve absentee voting for those living in a remote area. The legislature in Wisconsin is currently reviewing a bill that would require absentee voters to complete a certification in front of two witnesses. Tennessee is also currently reviewing a bill that creates a class E felony for a person who is not an employee of the election commission to give an unsolicited request for an application for an absentee ballot. The bill also permits counting board officials to begin counting absentee and early ballots while the polls are open; but prohibits announcing the results before the polls are closed (National Conference of State Legislatures, 2002).

### **An Analysis of the Effect of Liberal Absentee Balloting**

A study done by the Committee for the Study of the American Electorate found that states that have more liberal absentee ballot provisions have actually seen voter turnout decrease. The study looked at liberal absentee ballot procedures such as the voter has the opportunity to request

an absentee ballot without specifying a reason, early voting, all mail balloting, and lists whereby citizens have the option to be mailed an absentee ballot. Those states that adopted liberal absentee ballot provisions saw an initial increase of voter turnout with the provisions, but in the long run states have seen a voter turnout decrease greater than states with more restrictive absentee balloting requirements (Committee for the Study of the American Electorate, 2001).

In election year 2000, those states that have adopted liberal absentee ballot provisions saw voter turnout increase 1.5% from election year 1996, while those states that did not adopt liberal absentee ballot provisions saw voter turnout increase 2.6%. In election year 1996, those states with liberal absentee ballot provisions saw voter turnout fall by 5.1% compared to election year 1992, and those states that did not adopt liberal absentee ballot provisions saw voter turnout fall by only 3.2% compared to election year 1992. One final measure shows that those states with liberal absentee balloting provisions saw voter turnout decline by .4% from election year 1988 to election year 2000, while those states without liberal absentee balloting provisions saw voter turnout increase by 2.2% from election year 1988 to election year 2000 (Committee for the Study of the American Electorate, 2001).

Using Election Day registration data in Idaho, New Hampshire, Maine, Minnesota, Wyoming, and Wisconsin, the study found that the states which adopted Election Day registration, had greater increases in voter turnout than the rest of the states. However one part of the study points out that in 1996 when voter interest was low, the decrease in voter turnout in same day election registration states was greater than for states which had not adopted the election day registration procedure. The study on Election Day registration concludes that in years of heightened interest in elections, Election Day registration actually enhances voter turnout, however Election Day registration is not recommended for every state because it provides no protection against last minute fraudulent registration (Committee for the Study of the American Electorate, 2001).

### **Voting Machines**

The equipment used to cast and count ballots loses millions of votes nationwide each election. Over the past four presidential elections, two out of every one hundred ballots cast registered no presidential vote. That rate is double in Senate and gubernatorial elections. Analysis of exit polls suggests that seventy percent of these uncounted votes are unintentional. In other words, approximately 1.5million votes for president were “cast” but not recorded or counted in 2000. Approximately 2.5 million votes for Senate and governor were “cast” but not recorded or counted over the last cycle (Caltech/MIT, 2001).

Hand-counted and optically scanned paper ballots have had the lowest rates of unmarked, uncounted and spoiled ballots in presidential, Senate and governor elections over the last 12 years. Punch cards have the highest rate of unmarked, uncounted, and spoiled ballots over the last four presidential elections. Lever machines have the highest rate of unmarked, uncounted, and spoiled ballots in Senate and governor elections over the last 12 years. Electronic machines have the second highest rate of unmarked, uncounted and spoiled ballots in presidential, Senate, and governor elections over the last 12 years. Optical scanning has the best track record of all equipment types currently in use (Caltech/MIT 2001)

The California Institute of Technology and the Massachusetts Institute of Technology teamed up in July 2001 and created a report where one of their many recommendations was to replace punch cards, lever machines, and older electronic machines with optical scanned ballot systems, or any electronic voting system proven to perform similarly well in extensive field tests. This would cost approximately \$2 per voter, or \$200 million, per year (over a fifteen to twenty year span) (Caltech/MIT, 2001).

Currently the bill H.R. 3295 deemed the *Help America Vote Act 2001*, has passed the House of Representatives and the Senate, and is now in a conference committee. The bill will provide legal assistance to states and/or counties in order to replace punch card machines with a more updated system such as optical scanners, touch screens and others (Congressional Record, 2002). The bill would also provide \$1 billion in 2002, \$750 million in 2003 and \$500 million in 2004 to help the states meet these standards and buy new equipment. The federal government would pay 75 percent of the costs, with states paying the rest (Seelye, 2001).

### **Provisional Ballots**

When a voter arrives at a polling place on election day to cast a ballot and his or her name is not found on the voter registration list, 20 states, and the District of Columbia, allow the voter to vote by casting a specially marked ballot. The most common term for this ballot is "provisional ballot," other terms include "challenge," "emergency," "special," and "affidavit." Provisional ballots are separated from non-provisional ballots and are counted later.

Some states do not specifically provide for provisional ballots, but have other methods of allowing voters to cast a ballot if their name does not appear on the voter registration list. Like provisional ballots, these ballots, once cast, also are separated from regular ballots and counted later. Specifically, six states require a voter to show identification and then sign an affidavit to obtain a ballot. Five states require the precinct worker, election day worker, or voter to call the main election office to receive an oral verification of registration in order to vote. If no oral verification from the county official or state election office can be obtained the voter is not allowed to vote. Ten states have other procedures by which to verify a voter's registration status. All procedures involve filling out some sort of paperwork and showing identification, which must include up-to-date residence information, in order to cast a ballot. Two states do not have specific provisions for allowing a voter to cast a ballot if his or her name is not found on the voter registration list. In seven states, provisional ballots are not required because six states have same-day registration and North Dakota has no registration (NCSL, 2001). Table 1 shows the legislation that has been passed by states since 2001, and their effect on provisional balloting.

### **Statewide Voter Files**

Statewide voter files are created to stop any election complications. Sloppy record keeping can make it appear that people have voted twice in the same election, at old addresses and in some cases even after death. Instances of duplicate voter registration occur when a citizen does not cancel their voter status in one state, then moves to another state and registers there. As a result, the ratio of voter turn out does not represent the true number of vote's cast in an election year. Inaccurate voter lists also create the possibility of voter fraud and cost taxpayers thousands of



## Primary Election Dates

Figure 4 shows the different states primary dates for the year 2002 to give a comparison of the general election season (time between the primary and general election). Each state uses its own formula, usually a specific day of the week, so 2002 is just an example. The significance is in the limitation put on the time that a candidate can campaign

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**Table 1: Provisional Ballots**

	<b>By what method can a person vote when her or his name does not appear on the official voter registration list?</b>
<b>Alabama</b>	Challenge ballot
<b>Alaska</b>	Questioned ballot
<b>Arizona</b>	Must show certificate of registration from the county, or identification with name and correct address, or vote a new residence ballot
<b>Arkansas</b>	Challenge ballot
<b>California</b>	Provisional ballot
<b>Colorado</b>	Must sign an affidavit
<b>Connecticut</b>	Challenge ballot
<b>Delaware</b>	Must receive oral verification from department of elections or obtain a court order
<b>D.C.</b>	Challenge or special ballot
<b>Florida</b>	Provisional ballot
<b>Georgia</b>	No provision
<b>Hawaii</b>	Must receive oral verification from the Elections Division; when a registered voter changes residence or changes his or her name, the voter must register. The voter must complete a voter registration form or other applicable forms before the close of the polls on election day.
<b>Idaho</b>	Same-day registration
<b>Illinois</b>	Affidavit and proof of residence
<b>Indiana</b>	Circuit court clerk or board of registration must provide a certificate of error and oral or written affirmation of residence
<b>Iowa</b>	Special paper ballot
<b>Kansas</b>	Provisional ballot
<b>Kentucky</b>	Must sign an affidavit
<b>Louisiana</b>	Must sign an affidavit
<b>Maine</b>	Same-day registration

<b>Maryland</b>	Provisional ballot
<b>Massachusetts</b>	Obtain verification from registrar of voters and sign a certificate
<b>Michigan</b>	Must sign an affidavit
<b>Minnesota</b>	Same-day registration
<b>Mississippi</b>	Affidavit ballot
<b>Missouri</b>	Obtain "express sanction of election authority"
<b>Montana</b>	Fill out a transfer form or new registration form
<b>Nebraska</b>	Conditional ballot or affidavit
<b>Nevada</b>	Special ballot
<b>New Hampshire</b>	Same-day registration
<b>New Jersey</b>	Provisional ballot
<b>New Mexico</b>	Voter must meet registration requirements for voting on a voter's copy of a certificate of registration or possess a certificate of eligibility
<b>New York</b>	Affidavit ballot
<b>North Carolina</b>	Challenge ballot
<b>North Dakota</b>	No voter registration
<b>Ohio</b>	Must complete change of name or change of residence, whichever is appropriate, and sign a statement
<b>Oklahoma</b>	Must show voter ID card and complete a voter registration application for a residence address within the precinct and sign an affidavit or verification from County Election Board
<b>Oregon</b>	Must complete and sign a registration card and deposit ballot in a larger envelope
<b>Pennsylvania</b>	Must obtain an order from the Court
<b>Rhode Island</b>	Must apply for a temporary registration certificate
<b>South Carolina</b>	Provisional ballot
<b>South Dakota</b>	Emergency voting card
<b>Tennessee</b>	Fail safe ballot (if voter is registered in county but is at the wrong precinct) or challenged ballot (if no record of

	registration can be located)
<b>Texas</b>	Must show ID and sign an affidavit
<b>Utah</b>	Must receive oral verification from the county clerk's office
<b>Vermont</b>	Adding name of person as directed by any superior or district judge on appeal or sign an affidavit
<b>Virginia</b>	Obtain permission from the general registrar and sign a statement confirming identification and valid voter status or "conditional" or provisional ballot
<b>Washington</b>	Special ballot
<b>West Virginia</b>	Provisional or challenged ballot
<b>Wisconsin</b>	Same-day registration
<b>Wyoming</b>	Same-day registration

Source: National Conference of State Legislators

