

Elections Changes Mean Many Questions for States, but Few Sufficient Answers

By R. Doug Lewis

Governors and state legislators need to re-evaluate the federal changes to voter registration and election administration and determine if the model for management of those functions is current to state needs and practices. Where the election process for more than two centuries has been principally at the local level through county and city governments, with states responsible for policy development and enforcement, Congress continues to make the states the chief administrative body. State administrative and legislative response to the dramatic changes in level of responsibility has not kept pace with the federal mandates.

State governments are lagging behind in recognizing their responsibilities for voter registration and election administration have shifted the burdens of management of the democratic process. And that burden is on the states. The changes mean that many states have not kept up through appropriate changes in their staffing to implement mandates or in their ability to provide the services necessary to manage the changes.

With the passage of the National Voter Registration Act, which affected the states beginning in 1995, Congress has made a consistent thrust to make states—not local governments—the focus of responsibility for meeting federal mandates in voter registration and elections administration. The legislation established the concept of a chief elections officer for each state that had not been identified prior to passage. The states became responsible for implementation by utilizing state agencies, principally the Department of Motor Vehicles and the state social service agencies, as participants in election responsibility for American elections.

The Help America Vote Act passed in 2002, took the concept of state responsibility even further with several mandates on the states. It mandated:

- Statewide voter databases;
- State definitions of what constitutes a vote that is to be followed uniformly throughout the state so that candidates, the media and the public will know what is to be counted before an election;
- Establishment of provisional voting to be conducted uniformly throughout the state;
- State plans for elections that have to be submitted to the U.S. Elections Assistance Commission which spell out how the state will accomplish its goals with federal money, among other duties;

- Centralization of decision and implementation because the chief election officer is assigned specific duties including the planning functions and distribution of Help America Vote Act funds;
- Changes in voting equipment, which increased state responsibility in the role of certification and decertification of voting equipment; and
- A compliance role state election offices did not have prior to the law, including federal audits of federal funds as well as voting systems compliance, database compliance and maintenance of effort requirements, among others.

Revisions to the Uniformed and Overseas Citizens Absentee Voting Act, also called the MOVE Act, in 2009 mandated additional state responsibility for assisting military and overseas voters, including sending ballots by electronic means, becoming a repository for returned ballots (which then can be redistributed to local governments), providing the chief information portal to military and overseas voters for voter registration information and absentee ballot applications and ultimately assuring the distribution of the ballots to the voters. While in some instances the states can delegate some or all portions of the legislation, it is ultimately the state government that is held accountable.

Legislation that passed the U.S. House Administration Committee (but not the Senate—at least not yet), makes the states responsible for providing absentee ballots by mail to any voter who so chooses. Other House Committee-passed legislation wants states to keep systems that will show voters where their absentee applications and even ballots are at all times and to show that information on the Internet.

New legislation that will likely have a chance of passage in this year or next would mandate that

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state governments provide online Internet voter registration to all voters within the states.

Additionally, a major shift of responsibility for voter registration is likely to emerge from the U.S. Senate in the near future. U.S. Sen. Charles Schumer of New York, who serves as chair of the Senate Rules Committee (where election legislation is considered), is indicating that a major revision to how voter registration is handled is in the works. States will have responsibility for officially taking over responsibility for voter registrations (meaning the state has to be responsible for assuring all citizens of eligible voting age are enumerated and added to the voting rolls).

States will be responsible for devising methods to “automatically” put voters on the rolls of eligible voters within each state. Traditionally, voter registration has been a local government responsibility but in a somewhat passive manner; i.e., that political parties, candidate organizations and activist groups have been principally the method by which voters got registered. While local governments conduct voter registration drives, it is essentially voters seeking out one of the locations for official registration. The National Voter Registration Act started to shift the responsibility to the states. If the anticipated legislation is passed by both bodies in Congress, it means the shift to state-administered voter registration will be completed, forcing new responsibilities on state governments for voter registration and states would have to develop a more far-reaching proactive role in registering voters. However, most developed democracies in the world have made voter registration the responsibility of government (either national or regional governments depending on which countries are studied).

Why does any of this need the attention of governors or state legislatures? Simply because the responsibilities are quickly outgrowing the states’ ability to manage the process. In most of the U.S., the state responsibility for handling elections matters is on either the secretary of state or the lieutenant governor. In 12 states, that role falls to either a state board or commission, which are usually bipartisan with professional staff.

State governments have not looked sufficiently at what the federal mandates are doing in terms of long term professional staffing and reducing key employee turnover when a change occurs in the chief election official’s office.

When the Help America Vote Act passed, the federal government allocated more than \$3 billion

to state governments to make the transition to new federal requirements. That was to buy new voting equipment and to build and implement statewide voter databases (and other purposes). But the lion’s share of that money is either spent or spoken for. States were able, in some instances, to hire additional staff with the funds, but many of those positions will disappear when the funds are expended.

The requirements of federal legislation and the emphasis on shifting the authority, responsibility and compliance to state government—and away from local governments—is leaving many states without the necessary tools to actually fulfill their roles long term. The changes mandated in voting equipment alone meant that state and local governments had to buy more sophisticated equipment than was used in the past. Lever machines and punch card voting equipment are a thing of the past. Even optical scan technology, first introduced into voting in the 1970s, has become far more complex with both the technology to read the optical scan ballots and the software used to count and report the results. Maintenance is at an all time premium for governments at both the state and local level. The ability of manufacturers to serve jurisdictions with sufficient trained and qualified maintenance personnel has decreased, leaving state governments as a needed resource to local governments for skilled technology service and direction.

That means that state governments have to hire employees that were not necessary just 10 years ago. Those roles of technical direction for voting equipment are matched by needs for skilled technical personnel for management and maintenance of statewide voter databases. While many states spent \$10 million to \$25 million or more to develop and implement those databases, that is only the beginning of costs to states as those databases are forced to evolve. What many local governments were dismayed with the Congressionally mandated state level databases is that they had to give up their local databases. The local databases were used not only as a “list maintenance” device but as an election management tool that integrated the needs of absentee ballot applications and ballot distribution; for poll worker recruitment, management and payroll functions; for redistricting and for splitting precincts for ballot and voter management; for determining where voting sites would be established, and a myriad of other such election management functions. Several states already have made allowances for these kinds of changes, but it is clear that the changing mandates of Congress

and state legislatures mean state databases will have to evolve for the ever-changing needs.

State governments and their key leadership are not responding to the shifts in responsibility. It is hard for states to face increasing staffing and increasing resources for elections when there is an almost constant drain on state treasuries for more and more needs and public services or dismal economic times. Financial constraints is the exact reason state governments must begin to look at how to restructure the overall response to increased federal mandates related to the elections process.

Elections, out of necessity, will remain principally a local function, but clearly federal legislation trends show that states will be forced to be more “hands on” than in the past. That means additional and more experienced personnel at the state level. With increased federal mandates, increased policymaking, increased compliance and increased administrative roles, the current structure of state elections management is likely to require a re-evaluation of how best to serve the state.

Among the questions that need to be considered are these:

- How does state government begin to address the growing need for databases that communicate with each other and have become data exchange formats? It will be far easier for states to begin to focus on a handful of data sources than having every agency in state government create its own.
- Should states create new centralized governmental data centers? (The Dutch government does this now.)
- Should elections functions at the state government level be given more responsibility over data sources even if they remain in individual agencies? If the federal government is successful in making voter registration a state responsibility, it will be more important than ever to have good database sources.
- What is the best structure for state elections offices?
- If there is to be a turnover of the people elected to serve as secretary of state or lieutenant governor, then should there be as much turnover with employees?
- Can there be ways or methods of protecting (in a bipartisan manner) experienced elections management, technical and support staff?
- What models exist and what are the best ways of assuring that states are not faced with excessive (and destructive) turnover in key personnel?

Learning to manage the elections process does not happen quickly—it is not like hiring another accountant or 10 more engineers where you may be able to interchange personnel with the ups and downs of the economy or with the changing of elected officials. Skill sets for elections management personnel take years to develop and replacing them takes time.

Turnover in the elections management in America is at an all time high. Since election 2000, turnover in local elections office has been 40 percent and in several states, it is considerably higher than 50 percent. That turnover means state governments have to provide better leadership, better training and better support services.

Can legislatures look at and develop new ideas on streamlining the elections processes within each state? Are there ways to redesign methods that function better for the citizens and/or are more cost effective? Much of what has developed in the elections process over the years has been because some group or organization wanted to change one piece of the puzzle and then locked that piece into law. But elections management has been unable to achieve additional savings because the “pieces”—locked in by law—don’t allow for streamlining very well.

How will states respond? So far they have not focused on the dramatic changes brought by federal requirements—which simply means there are many questions but not yet sufficient answers.

About the Author

Doug Lewis, a certified elections/registration administrator (CERA), is executive director of The Election Center, a nonpartisan, nonprofit organization representing the nation’s election officials. He has been called on by Congress, federal agencies, state legislatures, and national and worldwide news media for solutions to voting issues.