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EMERGENCY ASSISTANCE FOR SECURE ELECTIONS ACT OF 2008

APRIL 14, 2008.—Ordered to be printed

Mr. BRADY of Pennsylvania, from the Committee on House Administration, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 5036]

[Including cost estimate of the Congressional Budget Office]

The Committee on House Administration, to whom was referred the bill (H.R. 5036) to direct the Administrator of General Services to reimburse certain jurisdictions for the costs of obtaining paper ballot voting systems for the general elections for Federal office to be held in November 2008, to reimburse jurisdictions for the costs incurred in conducting audits or hand counting of the results of the general elections for Federal office to be held in November 2008, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Emergency Assistance for Secure Elections Act of 2008".

SEC. 2. PAYMENTS TO CERTAIN JURISDICTIONS CONDUCTING 2008 GENERAL ELECTIONS.

(a) REIMBURSEMENT FOR CONVERSION TO PAPER BALLOT VOTING SYSTEM.—

(1) IN GENERAL.—The Election Assistance Commission shall pay to each eligible jurisdiction an amount equal to the sum of the following:

(A) The documented reasonable costs paid or incurred by such jurisdiction to replace any voting systems used to conduct the general elections for Federal office held in November 2006 that did not use or produce a paper ballot

verified by the voter or a paper ballot printout verifiable by the voter at the time the vote is cast with paper ballot voting systems.

(B) The documented reasonable costs paid or incurred by such jurisdiction to obtain non-tabulating ballot marking devices that are accessible for individuals with disabilities in accordance with the requirements of section 301(a)(3) of the Help America Vote Act of 2002.

(C) The documented reasonable costs paid or incurred by such jurisdiction to obtain ballot marking stations or voting booths for the protection of voter privacy.

(D) The documented reasonable costs paid or incurred by such jurisdiction to obtain paper ballots.

(E) The documented reasonable costs paid or incurred by such jurisdiction to obtain precinct-based equipment that tabulates paper ballots or scans paper ballots.

(F) The documented reasonable administrative costs paid or incurred by such jurisdiction that are associated with meeting the requirements for an eligible jurisdiction.

(2) ELIGIBLE JURISDICTION DEFINED.—In this subsection, an "eligible jurisdiction" means a jurisdiction that submits to the Commission (and, in the case of a county or equivalent jurisdiction, provides a copy to the State), at such time and in such form as the Commission may require, an application containing—

(A) assurances that the jurisdiction conducted regularly scheduled general elections for Federal office in November 2006 using (in whole or in part) a voting system that did not use or produce a paper ballot verified by the voter or a paper ballot printout verifiable by the voter at the time the vote is cast;

(B) assurances that the jurisdiction will conduct the regularly scheduled general elections for Federal office to be held in November 2008 using only paper ballot voting systems;

(C) assurances that the jurisdiction has obtained or will obtain a sufficient number of non-tabulating ballot marking devices that are accessible for individuals with disabilities in accordance with the requirements of section 301(a)(3) of the Help America Vote Act of 2002;

(D) assurances that the jurisdiction has obtained or will obtain a sufficient number of ballot marking stations or voting booths for the protection of voter privacy;

(E) assurances that the jurisdiction has obtained or will obtain a sufficient number of paper ballots;

(F) such information and assurances as the Commission may require to make the determinations under paragraph (1); and

(G) such other information and assurances as the Commission may require.

(3) DETERMINATIONS OF REASONABLENESS OF COSTS.—The determinations under paragraph (1) of whether costs paid or incurred by a jurisdiction are reasonable shall be made by the Commission.

(4) PAPER BALLOT VOTING SYSTEM DEFINED.—In this subsection, a "paper ballot voting system" means a voting system that uses a paper ballot marked by the voter by hand or a paper ballot marked by the voter with the assistance of a non-tabulating ballot marking device described in paragraph (1)(B).

(b) REIMBURSEMENT FOR RETROFITTING OF DIRECT RECORDING ELECTRONIC VOTING SYSTEMS TO PRODUCE VOTER VERIFIABLE PAPER RECORDS.—

(1) IN GENERAL.—The Commission shall pay to each eligible jurisdiction an amount equal to the documented reasonable costs paid or incurred by such jurisdiction to retrofit direct recording electronic voting systems so that the systems will produce a voter verifiable paper record of the marked ballot for verification by the voter at the time the vote is cast, including the costs of obtaining printers to produce the records.

(2) ELIGIBLE JURISDICTION DEFINED.—In this subsection, an "eligible jurisdiction" means a jurisdiction that submits to the Commission (and, in the case of a county or equivalent jurisdiction, provides a copy to the State), at such time and in such form as the Commission may require, an application containing—

(A) assurances that the jurisdiction has obtained or will obtain a printer for and retrofit each direct recording electronic voting system used to conduct the general elections for Federal office held in November 2008 so that the system will produce a voter verifiable paper record of the marked ballot for verification by the voter;

(B) such information and assurances as the Commission may require to make the determinations under paragraph (1); and

(C) such other information and assurances as the Commission may require.

(3) DETERMINATION OF REASONABLENESS OF COSTS.—The determinations under paragraph (1) of whether costs paid or incurred by a jurisdiction are reasonable shall be made by the Commission.

(c) REIMBURSEMENT FOR PROVISION OF BACKUP PAPER BALLOTS BY JURISDICTIONS USING DIRECT RECORDING ELECTRONIC VOTING SYSTEMS.—

(1) IN GENERAL.—The Commission shall pay to each eligible jurisdiction an amount equal to the documented reasonable costs paid or incurred by such jurisdiction to obtain, deploy, and tabulate backup paper ballots (and related supplies and equipment) that may be used in the event of the failure of a direct recording electronic voting system in the regularly scheduled general elections for Federal office to be held in November 2008.

(2) ELIGIBLE JURISDICTION DEFINED.—In this subsection, an "eligible jurisdiction" means a jurisdiction that submits to the Commission (and, in the case of a county or equivalent jurisdiction, provides a copy to the State), at such time and in such form as the Commission may require, an application containing—

(A) assurances that the jurisdiction will post, in a conspicuous manner at all polling places at which a direct recording electronic voting system will be used in such elections, a notice stating that backup paper ballots are available at the polling place and that a voter is entitled to use such a ballot upon the failure of a voting system;

(B) assurances that the jurisdiction counts each such backup paper ballot cast by a voter as a regular ballot cast in the election, and does not treat it (for eligibility purposes) as a provisional ballot under section 302(a) of the Help America Vote Act of 2002, unless the individual casting the ballot would have otherwise been required to cast a provisional ballot;

(C) such information and assurances as the Commission may require to make the determinations under paragraph (1); and

(D) such other information and assurances as the Commission may require.

(3) DETERMINATION OF REASONABLENESS OF COSTS.—The determinations under paragraph (1) of whether costs paid or incurred by a jurisdiction are reasonable shall be made by the Commission.

(d) AMOUNTS.—There are authorized to be appropriated to the Commission such sums as may be necessary for payments under this section. Any amounts appropriated pursuant to the authorization under this subsection shall remain available until expended.

SEC. 3. PAYMENTS FOR CONDUCTING MANUAL AUDITS OF RESULTS OF 2008 GENERAL ELECTIONS.

(a) PAYMENTS.—

(1) ELIGIBILITY FOR PAYMENTS.—If a State conducts manual audits of the results of any of the regularly scheduled general elections for Federal office in November 2008 (and, at the option of the State, conducts audits of elections for State and local office held at the same time as such election) in accordance with the requirements of this section, the Commission shall make a payment to the State in an amount equal to the documented reasonable costs incurred by the State in conducting the audits.

(2) CERTIFICATION OF COMPLIANCE AND COSTS.—

(A) CERTIFICATION REQUIRED.—In order to receive a payment under this section, a State shall submit to the Commission, in such form as the Commission may require, a statement containing—

(i) a certification that the State conducted the audits in accordance with all of the requirements of this section;

(ii) a statement of the reasonable costs incurred in conducting the audits; and

(iii) such other information and assurances as the Commission may require.

(B) AMOUNT OF PAYMENT.—The amount of a payment made to a State under this section shall be equal to the reasonable costs incurred in conducting the audits.

(C) DETERMINATION OF REASONABLENESS OF COSTS.—The determinations under this paragraph of whether costs incurred by a State are reasonable shall be made by the Commission.

(3) TIMING OF PAYMENTS.—The Commission shall make the payment required under this section to a State not later than 30 days after receiving the statement submitted by the State under paragraph (2).

(4) MANDATORY IMMEDIATE REIMBURSEMENT OF COUNTIES AND OTHER JURISDICTIONS.—If a county or other jurisdiction responsible for the administration

of an election in a State incurs costs as the result of the State conducting an audit of the election in accordance with this section, the State shall reimburse the county or jurisdiction for such costs immediately upon receiving the payment from the Commission under paragraph (3).

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary for payments under this section. Any amounts appropriated pursuant to the authorization under this subsection shall remain available until expended.

(b) AUDIT REQUIREMENTS.—In order to receive a payment under this section for conducting an audit, the State shall meet the following minimum requirements:

(1) Not later than 30 days before the date of the regularly scheduled general election for Federal office in November 2008, the State shall establish and publish guidelines, standards, and procedures to be used in conducting audits in accordance with this section.

(2) The State shall select an appropriate entity to oversee the administration of the audit, in accordance with such criteria as the State considers appropriate consistent with the requirements of this section, except that the entity must meet a general standard of independence as defined by the State.

(3) The State shall determine whether the units in which the audit will be conducted will be precincts or some alternative auditing unit, and shall apply that determination in a uniform manner for all audits conducted in accordance with this section.

(4) The State shall select the precincts or alternative auditing units in which audits are conducted in accordance with this section in a random manner following the election after the final unofficial vote count (as defined by the State) has been announced, such that each precinct or alternative auditing unit in which the election was held has an equal chance of being selected, subject to paragraph (9), except that the State shall ensure that at least one precinct or alternative auditing unit is selected in each county in which the election is held.

(5) The audit shall be conducted in not less than 2 percent of the precincts or alternative auditing units in the State (in the case of a general election for the office of Senator) or the Congressional district involved (in the case of an election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress).

(6) The State shall determine the stage of the tabulation process at which the audit will be conducted, and shall apply that determination in a uniform manner for all audits conducted in accordance with this section, except that the audit shall commence within 48 hours after the State or jurisdiction involved announces the final unofficial vote count (as defined by the State) in each precinct in which votes are cast in the election which is the subject of the audit.

(7) With respect to each precinct or alternative audit unit audited, the State shall ensure that a voter verified paper ballot or paper ballot printout verifiable by the voter at the time the vote is cast is available for every vote cast in the precinct or alternative audit unit, and that the tally produced by counting all of those paper ballots or paper ballot printouts by hand is compared with the corresponding final unofficial vote count (as defined by the State) announced with respect to that precinct or audit unit in the election.

(8) Within each precinct or alternative audit unit, the audit shall include all ballots cast by all individuals who voted in or who are under the jurisdiction of the precinct or alternative audit unit with respect to the election, including absentee ballots (subject to paragraph (9)), early ballots, emergency ballots, and provisional ballots, without regard to the time, place, or manner in which the ballots were cast.

(9) If a State establishes a separate precinct for purposes of counting the absentee ballots cast in the election and treats all absentee ballots as having been cast in that precinct, and if the state does not make absentee ballots sortable by precinct and include those ballots in the hand count described in paragraph (7) which is administered with respect to that precinct, the State may divide absentee ballots into audit units approximately equal in size to the average precinct in the State in terms of the number of ballots cast, and shall randomly select and include at least 2 percent of those audit units in the audit. Any audit carried out with respect to such an audit unit shall meet the same standards applicable under paragraph (7) to audits carried out with respect to other precincts and alternative audit units, including the requirement that all paper ballots be counted by hand.

(10) The audit shall be conducted in a public and transparent manner, such that members of the public are able to observe the entire process.

(c) COLLECTION AND SUBMISSION OF AUDIT RESULTS; PUBLICATION.—

(1) STATE SUBMISSION OF REPORT.—In order to receive a payment under this section, a State shall submit to the Commission a report, in such form as the Commission may require, on the results of each audit conducted under this section.

(2) COMMISSION ACTION.—The Commission may request additional information from a State based on the report submitted under paragraph (1).

(3) PUBLICATION.—The Commission shall publish each report submitted under paragraph (1) upon receipt.

(d) DELAY IN CERTIFICATION OF RESULTS BY STATE.—No State may certify the results of any election which is subject to an audit under this section prior to completing the audit, resolving discrepancies discovered in the audit, and submitting the report required under subsection (c).

SEC. 4. PAYMENTS FOR CONDUCTING HAND COUNTS OF RESULTS OF 2008 GENERAL ELECTIONS.

(a) PAYMENTS.—

(1) ELIGIBILITY FOR PAYMENTS.—If a State, county, or equivalent location tallies the results of any regularly scheduled general election for Federal office in November 2008 by conducting a hand count of the votes cast on the paper ballots used in the election (including paper ballot printouts verifiable by the voter at the time the vote is cast) in accordance with the requirements of this section, the Commission shall make a payment to the State, county, or equivalent location in an amount equal to the documented reasonable costs incurred by the State, county, or equivalent location in conducting the hand counts.

(2) CERTIFICATION OF COMPLIANCE AND COSTS.—

(A) CERTIFICATION REQUIRED.—In order to receive a payment under this section, a State, county, or equivalent location shall submit to the Commission (and, in the case of a county or equivalent jurisdiction, shall provide a copy to the State), in such form as the Commission may require, a statement containing—

(i) a certification that the State, county, or equivalent location conducted the hand counts in accordance with all of the requirements of this section;

(ii) a statement of the reasonable costs incurred by the State, county, or equivalent location in conducting the hand counts; and

(iii) such other information and assurances as the Commission may require.

(B) AMOUNT OF PAYMENT.—The amount of a payment made to a State, county, or equivalent location under this section shall be equal to the reasonable costs incurred by the State, county, or equivalent location in conducting the hand counts.

(C) DETERMINATION OF REASONABLENESS OF COSTS.—The determinations under this paragraph of whether costs incurred by a State, county, or equivalent location are reasonable shall be made by the Commission.

(3) TIMING OF PAYMENTS.—The Commission shall make the payment required under this section to a State, county, or equivalent location not later than 30 days after receiving the statement submitted by the State, county, or equivalent location under paragraph (2).

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary for payments under this section. Any amounts appropriated pursuant to the authorization under this subsection shall remain available until expended.

(b) HAND COUNTS DESCRIBED.—

(1) IN GENERAL.—A hand count conducted in accordance with this section is a count of all of the paper ballots on which votes were cast in the election (including paper ballot printouts verifiable by the voter at the time the vote is cast), including votes cast on an early, absentee, emergency, and provisional basis, which is conducted by hand to determine the winner of the election and is conducted without using electronic equipment or software.

(2) COMPLETENESS.—With respect to each jurisdiction in which a hand count is conducted, the State, county, or equivalent location shall ensure that a voter verified paper ballot or paper ballot printout verifiable by the voter at the time the vote is cast is available for every vote cast in the jurisdiction.

(c) PROCESS FOR CONDUCTING HAND COUNTS.—

(1) IN GENERAL.—In order to meet the requirements of this section, a hand count of the ballots cast in an election shall be conducted in accordance with the following procedures:

(A) After the closing of the polls on the date of the election, the appropriate election official shall secure the ballots at the polling place (or, in the

case of ballots cast at any other location, at the office of the chief election official of the jurisdiction conducting the hand count).

(B) Beginning at any time after the expiration of the 8-hour period that begins at the time the polls close on the date of the election, the jurisdiction shall conduct an initial hand count of the ballots cast in the election, using the ballots which are eligible to be counted in the election as of the time the polls are closed.

(C) Any ballot which is eligible to be counted in the election but which is not included in the initial count conducted under subparagraph (B), including a provisional ballot cast by an individual who is determined to be eligible to vote in the election or an absentee ballot received after the date of the election but prior to the applicable deadline under State law for the receipt of absentee ballots, shall be subject to a hand count in accordance with this section and added to the tally conducted under subparagraph (B) not later than 48 hours after the ballot is determined to be eligible to be counted.

(D) The hand count shall be conducted by a team of not fewer than 2 individuals who shall be witnessed by at least one observer sitting at the same table with such individuals. Except as provided in paragraph (2), all such individuals shall be election officials of the jurisdiction in which the hand count is conducted. The number of such individuals who are members of the political party whose candidates received the greatest number of the aggregate votes cast in the regularly scheduled general elections for Federal office held in the State in November 2006 shall be equal to the number of such individuals who are members of the political party whose candidates received the second greatest number of the aggregate votes cast in the regularly scheduled general elections for Federal office held in the State in November 2006.

(E) After the completion of the hand count, the ballots may be run through a tabulating machine or scanner for comparison with the tally, if such a machine or scanner is available.

(2) USE OF OTHER PERSONNEL.—An individual who is not an election official of the jurisdiction in which a hand count is conducted under this section may serve on a team conducting the hand count or may serve as an observer of a team conducting the hand count if the jurisdiction certifies that the individual has completed such training as the jurisdiction deems appropriate to conduct or observe the hand count (as the case may be).

(3) LOCATION.—The hand counts conducted under this section of the ballots cast in an election shall be conducted—

(A) in the case of ballots cast at a polling place on the date of the election, at the polling place at which the ballots were cast; or

(B) in the case of any other ballots, at the office of the chief election official of the jurisdiction conducting the hand count.

(4) INFORMATION INCLUDED IN RESULTS.—Each hand count conducted under this section shall produce the following information with respect to the election:

(A) The vote tally for each candidate.

(B) The number of overvotes, undervotes, spoiled ballots, and blank ballots cast (or their equivalents, as defined by the State, county or equivalent location).

(C) The number of write-in ballots and the names written in on such ballots pursuant to State law.

(D) The total number of ballots cast.

(E) A record of judgement calls made regarding voter intent.

(5) PUBLIC OBSERVATION OF HAND COUNTS.—Each hand count conducted under this section shall be conducted in a manner that allows public observation of the entire process (including the opening of the ballot boxes or removal of machine-printed ballots from their containers, the sorting, counting, and notation of results, and the announcement of final determinations) sufficient to confirm but not interfere with the proceedings.

(6) ESTABLISHMENT AND PUBLICATION OF PROCEDURES.—Prior to the date of the regularly scheduled general election for Federal office held in November 2008, a State, county, or equivalent location shall establish and publish procedures for carrying out hand counts under this subsection.

(d) APPLICATION TO JURISDICTIONS CONDUCTING ELECTIONS WITH DIRECT RECORDING ELECTRONIC VOTING SYSTEMS.—

(1) REQUIRING SYSTEMS TO PRODUCE VOTER VERIFIABLE PAPER RECORD.—If a State, county, or equivalent location uses a direct recording electronic voting system to conduct an election, the State, county, or equivalent location may not receive a payment under this section for conducting a hand count of the votes

cast in the election unless (in addition to meeting the other requirements applicable under this section) the State, county, or equivalent location certifies to the Commission that each such system produces a paper record printout of the marked ballot which is verifiable by the voter at the time the vote is cast.

(2) TREATMENT OF PAPER RECORD PRINTOUTS.—In applying this section to a hand count conducted by a State, county, or equivalent location which provides a certification to the Commission under paragraph (1), the paper record printout referred to in such paragraph shall be treated as the paper ballot used in the election.

(e) ANNOUNCEMENT AND POSTING OF RESULTS.—Upon the completion of a hand count conducted under this section, the State, county, or equivalent location shall announce the results to the public and post them on a public Internet site.

(f) USE OF HAND COUNT IN CERTIFICATION OF RESULTS.—The State shall use the results of the hand count conducted under this section for purposes of certifying the results of the election involved. Nothing in this section may be construed to affect the application or operation of any State law governing the recount of the results of an election.

SEC. 5. STUDY, TESTING, AND DEVELOPMENT OF PRODUCTS AND PRACTICES TO ENSURE ACCESSIBILITY OF PAPER BALLOT VERIFICATION AND CASTING FOR CERTAIN INDIVIDUALS.

(a) STUDY, TESTING, AND DEVELOPMENT.—The Director of the National Institute of Standards and Technology (hereafter in this section referred to as the "Director") shall study, test, and develop products and practices that ensure the accessibility of paper ballot verification and casting for individuals with disabilities, for voters whose primary language is not English, and for voters with difficulties in literacy, including the mechanisms themselves and the processes through which the mechanisms are used. In carrying out this subsection, the Director shall specifically investigate existing and potential methods or devices, including non-electronic devices, that will assist such individuals and voters in creating voter-verified paper ballots, presenting or transmitting the information printed or marked on such ballots back to such individuals and voters in an accessible form, and enabling the voters to cast the ballots.

(b) REPORT.—Not later than June 30, 2009, the Director shall submit a report to Congress on the results of the studying, testing, and development of products and practices under subsection (a).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Director such sums as may be necessary to carry out this section, to remain available until expended.

SEC. 6. DEFINITIONS.

In this Act—

(1) the term "Commission" means the Election Assistance Commission; and

(2) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

Amend the title so as to read:

A bill to direct the Election Assistance Commission to reimburse certain jurisdictions for the costs of obtaining paper ballot voting systems for the general elections for Federal office to be held in November 2008, to reimburse jurisdictions for the costs incurred in conducting audits or hand counting of the results of the general elections for Federal office to be held in November 2008, and for other purposes.

EMERGENCY ASSISTANCE FOR SECURE ELECTIONS ACT OF 2008

PURPOSE OF THE LEGISLATION

In 2002, in response to the public's mounting concern about election administration problems stemming from the controversial presidential election in 2000, Congress passed the Help America Vote Act (HAVA) P.L. 107–252 (42 U.S.C. 15301) to improve the voting process in a number of ways. One improvement to the election process involved the replacement of punch card and lever voting machines with paperless direct recording electronic (DRE) voting machines. Although these machines are generally easy to use and, if properly equipped, accessible to voters with disability and language assistance needs, the 2006 election revealed that these

machines suffer from an essential flaw: the digital results reported from these machines cannot be audited independently. The only output available is a digital readout that relies on the accuracy of the electronic software during the voting process and cannot be recounted. As a result, many of these paperless DRE voting machines are not properly equipped to independently demonstrate voter intent during a recount or audit.

If a voter casts a vote on a paperless electronic voting machine, the only thing the voter verifies—the information displayed on the touch screen surface for a few moments while the voter votes—disappears forever the moment the voter hits the "cast vote" button and leaves the voting booth. No election official, no computer scientist, and no voting system vendor can reconstruct what that voter intended because the voter votes in secret. Because of the secret ballot, only the voter can verify that his or her intention is recorded correctly, and it is impossible for the voter to verify an electronic record.

When questions arise, candidates, voters and election officials alike are left to trust voting system vendors who insist their trade-secret-protected software counts votes accurately. This difficulty became glaringly apparent in the 2006 election, when reports revealed voting problems in numerous jurisdictions, producing a lack of voter confidence and uncertainty regarding election results.[1] Furthermore, recent 2008 primary elections have revived concerns about the paperless touch screen voting machines.[2]

In order to increase public confidence and secure the 2008 general election, the law must be revised to support paperless jurisdictions' efforts to invest in voting systems that are equipped with an independent paper copy of each vote—verified by the voter him or herself—to serve as a check on any electronic tallies reported by the voting machines. Support should also be provided for jurisdictions that choose to adopt additional safeguards such as manually

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[1] Examples of news articles include: Tinsley, Anna M. and Anthony Spangler. "Vote Spike Blamed on Program Snafu." Fort Worth Star-Telegram, March 9, 2006; Tinsley, Anna M. "Judicial Candidate Files Challenge." Fort Worth Star-Telegram, April 6, 2006; "Pottawattamie County Recorder's Race Leads to Recount." The Associated Press, June 8, 2006; Rabin, Charles and Darran Simon. "Glitches Cited in Early Voting; Early Voters are Urged to Cast Their Ballots with Care Following Scattered Reports of Problems with Heavily Used Machines." The Miami Herald, October 28, 2006; McCormick, John. "Voting Equipment Glitches Lingering." Chicago Tribune, November 2, 2006; Smith, Tammy M. "New Voting Machines Pose Election Day Problems." Sun Herald (Mississippi), November 7, 2006; "Voting Problems Reported in NJ." New Jersey—WABC, November 7, 2006; Glendenning, Lauren. "Voting Glitch in Fairfax, Some Machine Malfunctions Could Fuel Arguments for Recount." The Connection Newspaper (Virginia), November 8, 2006; "Some Electronic Voting Machines Not 'up to date'." Pittsburg Tribune-Review, November 8, 2006; Burk, Jennifer. "Bibb Voting Glitches Nothing Out of the Ordinary, Carr Says." The Telegraph (Georgia), November 9, 2006; "Disabled Voters Disappointed with Touch-Screen Problems." WISH–TV, November 10, 2006; King, Lauren. "Count on Recount in E. City Mayor's Race." The Virginian-Pilot, November 11, 2005; "Arkansas Mayoral Candidate Disputes Tally of Zero Votes, Says He Voted for Himself." The Associated Press, November 11, 2006; "Hendersonville Voters Back Building Height Restriction." Tryon Daily Bulletin, November 13, 2006; "Another Voting Glitch in Baldwin County." The Associated Press, November 14, 2006; Spoto, Maryann. "Voting Mishap Blamed on Software Problems, Some Ballots Counted Twice, Sparking a Call for a Check of Totals at Shore." Star-Ledger (New Jersey), November 14, 2006; Peters, Paul. "Communication Breakdown." Missoula Independent, November 16, 2006; "E-voting Glitch Turns up in Texas." CNet.News, November 16, 2006; Toland, Bill. "If You Think the Computer 'Flipped' Your Vote, You're Not Alone; Though Solid Evidence is Hard to Pin Down, Complaints Abound About Voting Machines." Pittsburgh Post-Gazette, December 10, 2006.

[2] Zimmer, Beau "Touch screen problems reported in Hillsborough" Tampa Bay 10, January 29, 2008; Kidwell, David "Chicago polls go well—despite punches, broken machines, wrong ballots and 'invisible ink'" Chicago Tribune, February 5, 2008; Walsh, Diane "Voting machines produced errors in primary" The Star Ledger, February 20, 2008; Carmen, Barbara "County's voting machines examined" Columbus Dispatch, March 16, 2008; Gier, Nancy "Democrats reporting irregularities in 14th District voting machines" Daily Herald, March 8, 2008.

auditing the 2008 general elections and/or conducting hand counts of the 2008 general election.

H.R. 5036 would reimburse paperless jurisdictions for reasonable costs associated with converting to paper ballot voting systems. Jurisdictions that transition to paper based voting systems in time for the 2008 general elections would have the option to continue to rely on the expediency, convenience and accessibility of computer-assisted voting, while preserving the critical ability to independently confirm that the will of the voters is reflected in the final results. H.R. 5036 does not mandate paper ballots and audits nationwide; rather, it provides an incentive to states and counties that want to implement a paper ballot voting system to prevent unauditable, unresolvable problems by opting in to the solution.

Additionally, H.R. 5036 includes reimbursement for obtaining, deploying, and tabulating backup paper ballots in the event of the failure of electronic voting systems. Eligible jurisdictions must post notification and voter rights to backup paper ballots at all polling locations and must count each backup ballot as a regularly cast ballot.

In amending H.R. 5036, the Committee has taken into account concerns raised by state and local officials and other stakeholders concerning the audit system. As reported, the bill allows jurisdictions to include at least 2% of all precincts, auditing units, or Congressional districts and designate an appropriate, independent official to oversee the administration of the audit. Audits, which shall include all ballots, including absentee, early, backup, and provisional ballots, should be conducted in a public and transparent manner, with the public able to observe the entire process.

H.R. 5036 does not alter the HAVA mandate requiring that voting systems be equipped for individuals with disabilities in each polling place. The Committee assured reliable voting for all eligible voters by working extensively with prominent organizations and advocates in the disability community to ensure the standard of providing every voter access to a private and independent ballot, established by HAVA, is not violated. Diane Cordry Golden, Ph.D., Director, Missouri Assistive Technology conveyed in testimony presented before the House Administration Committee's Subcommittee on Elections on March 15, 2007 that Congress should not restrict the rights of the disabled to vote privately and independently with new laws. H.R. 5036 does not change section 301(a)(3)(A) of HAVA, which requires each polling place be equipped with a voting machine that is accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as other voters.

Improvements in technology and practices for voters who have been disenfranchised historically are essential to ensure all eligible voters are confident in their ability to vote independently and have their votes accurately counted. As such, the National Institute of Standards and Technology will study, test, and develop products and practices that ensure the accessibility of paper ballot verification and casting for voters with disabilities, for voters whose primary language is not English, and for voters with difficulties in literacy. It should be noted that the Association of Assistive Technology Act Programs are the Federally supported experts on acces-

sible technology for persons with disabilities. It is the Committee's expectation that, in carrying out its responsibilities under H.R. 5036, NIST shall take advantage of the ATAP's significant and valuable expertise in assistive technology to make voting systems accessible. The Committee is eager to review the results of the study, tests, and development of products next year.

The 2008 general election is quickly approaching and options must be provided to increase the integrity of the vote. Through H.R. 5036, jurisdictions are provided ample flexibility to select which provisions they wish to implement. If the bill is enacted promptly, jurisdictions should have adequate time to purchase and implement the voting system upgrades and/or the other provisions of this bill.

SECTION-BY-SECTION SUMMARY OF LEGISLATION

The bill, as reported, directs the Election Assistance Commission to reimburse certain jurisdictions for the costs of obtaining paper ballot voting systems for the general elections for Federal office to be held in November 2008, to reimburse jurisdictions for the costs incurred in conducting audits or hand counting of the results of the general elections for Federal office to be held in November 2008, and for other purposes.

Section 1.—Short Title—This section establishes "The Emergency Assistance for Secure Elections Act of 2008" as the short title of the Act.

Section 2.—Payments to Certain Jurisdictions Conducting 2008 General Elections—This section authorizes such sums as necessary for the November 2008 Federal Elections to reimburse eligible jurisdictions that convert to paper ballot voting systems or retrofit paperless Direct Recording Electronic (DRE) Voting Systems with a voter verifiable record as well as reimburse jurisdictions using DRE Voting Systems for costs incurred in obtaining, deploying, and tabulating backup paper ballots in the event of a failure of the DRE Voting System.

Section (2)(a).—"Reimbursement for Conversion to Paper Ballot Voting System." This subsection authorizes the Election Assistance Commission (EAC) to reimburse states for reasonable costs incurred by a jurisdiction that does any of the following before the November 2008 Federal Elections: replaces any paperless voting system with a paper ballot voting system; obtains non-tabulating ballot marking devices for voters with disabilities; obtains ballot marking stations/voting booths; obtains paper ballots; and obtains precinct-based equipment that tabulates paper ballots or scans paper ballots. This subsection also establishes the following requirements for a jurisdiction to become eligible: used a paperless voting system in the November 2006 federal elections; will conduct federal elections in November 2008 using only paper ballot voting systems; obtains a sufficient number of non-tabulating marking devices that are accessible to disability voters; obtains a sufficient number of ballot marking stations/voting booths to ensure voter privacy; and obtains a sufficient amount of paper ballots. To receive payments the subsection requires each eligible jurisdiction to submit an application to the EAC containing assurances that it has or will meet the eligibility requirements set forth in this section. In Section (2)(a)(4) it defines "paper ballot voting system" as a voting

system that uses a paper ballot marked by the voter by hand or a paper ballot marked by the voter with the assistance of a non-tabulating ballot marking device.

Section (2)(b).—"Reimbursement for Retrofitting of Direct Recording Electronic Voting Systems To Produce Voter Verifiable Paper Records." This subsection authorizes the Election Assistance Commission (EAC) to reimburse jurisdictions for reasonable costs incurred by retrofitting paperless Direct Recording Electronic (DRE) Voting Systems with a voter verifiable record, including obtaining printers to produce the paper records. This subsection also defines eligible jurisdictions as those that submit an application to the EAC containing assurances that the jurisdiction has or will obtain a printer and retrofit each DRE Voting System used to conduct the November 2008 Federal Elections.

Section (2)(c).—"Reimbursement for Provision Of Backup Paper Ballots By Jurisdiction Using Direct Recording Electronic Voting Systems." This subsection authorizes the Election Assistance Commission (EAC) to reimburse jurisdictions for costs incurred in obtaining, deploying and tabulating backup paper ballots (and related supplies and equipment) in the event of a failing Direct Recording Electronic (DRE) Voting System. This subsection also establishes the following requirements for a jurisdiction to become eligible: post notification and voter rights to backup paper ballots at all polling places as well as count each backup paper ballot as a regular ballot and not a provisional ballot. To receive payments the subsection requires each eligible jurisdiction to submit an application to the EAC containing assurances that it will meet the eligibility requirements set forth in this section.

Section (2)(c).—"Amounts." This subsection authorizes such sums as necessary for payments under this section until all funds are expended.

Section 3.—Payments for Conducting Audits of Results of 2008 General Elections—This section authorizes such sums as necessary for the Election Assistance Commission (EAC) to reimburse states for reasonable costs incurred when conducting manual audits, in accordance with the requirements set forth in this section, of the results of any of the regularly scheduled November 2008 Federal Elections (including any concurrent state and local election).

Section (3)(a).—"Payments." This subsection authorizes such sums as necessary to reimburse States for reasonable cost incurred if they conduct a manual audit, in accordance with the requirements set forth in this section, of the results of any November 2008 Federal Election. In the event that a county or other jurisdiction administers such audits this subsection requires states to reimburse the counties or jurisdiction for such costs immediately upon receiving the payment under this section. In addition, the subsection requires the Election Assistance Commission to make payments no later than 30 days after receiving certification from States or counties that the audit was conducted in accordance with all the requirements.

Section (3)(b).—"Audit Requirements." This subsection establishes the following requirements that States must meet in order to receive payments under this section: establish and publish auditing procedures and standards 30 days before the November 2008 general elections; designate an appropriate and independent official

to oversee the administration of the audit; select precincts or alternative auditing units in a random as well as uniform manner after the final unofficial vote has been announced; select at least one precinct from each county in which the election is held; conduct the audit to include no less than 2 percent of the precincts, auditing units, or Congressional districts involved; commence the audit within 48 hours after the State or jurisdiction announces the final unofficial vote count; ensure a paper based voting system is available for every vote cast and that the tally produced by counting all of the paper ballots or printouts by hand is compared with the corresponding final unofficial vote count; include all ballots including absentee, early, backup, and provisional ballots in the audit; for States that establish a separate precinct for purposes of counting absentee ballots the State shall divide absentee ballots into audit units, approximately equal in size to the average precinct, and include at least 2% of those units; and conduct the audit in a public and transparent manner.

Section (3)(c).—"Collection and Submission of Audit Results; Publication." This subsection requires the State to submit to the Election Assistance Commission a report on the results of each audit conducted under this section.

Section (3)(d).—"Delay in Certification of Results by State." This subsection requires that no state may certify the results of any election prior to completing the audit, resolving discrepancies discovered, and submitting the required report.

Section 4.—Payments for Conducting Hand Counts of Results of 2008 General Elections—This section authorizes such sums as necessary for the Election Assistance Commission to reimburse states for reasonable costs incurred from tallying the election results by a hand count, in accordance with the section requirements, of the votes cast on the paper ballots for the November 2008 Federal Election.

Section (4)(a).—"Payments." This subsection authorizes such sums as necessary to reimburse States or counties for reasonable cost incurred if they conduct a hand count, in accordance with the requirements set forth in this section, of the votes cast on the paper ballots used in the November 2008 Federal Election. It also requires the Administrator to make payments no later than 30 days after receiving certification from States or counties that the hand count was conducted in accordance with all the requirements.

Section (4)(b).—"Hand Counts Described." This subsection provides a definition of a hand count and the standard of completeness it should ensure. It defines a hand count as a count of all the paper ballots cast in the election (including paper ballot printouts, early voting ballots, absentee ballots, emergency ballots, and provisional ballots) by hand to determine the winner of the election without the use of electronic equipment or software. To guarantee completeness the State or county is required to ensure that a voter verifiable paper ballot or paper ballot printout verifiable by the voter is available for every vote cast in the jurisdiction.

Section (4)(c).—"Process for Conducting Hand Counts." This subsection establishes the general requirements for how, where, and when the hand count shall be conducted. It requires a hand count to commence, at the earliest, 8 hours after the polls close. For any ballot not counted in the initial hand count but deemed eligible

(provisional or a late arrival absentee ballot), it shall be subject to a hand count and added to the official tally no later than 48 hours after the ballot is determined to be eligible. This subsection also requires the hand count to be conducted by no fewer than two individuals and at least one observer, who all must be election officials of the jurisdiction and be comprised of equal representation from both political parties. In regards to the location, the subsection requires hand counts to be conducted at the polling place on the date of the election and for other delayed ballots at the office of the jurisdiction's chief election official. The hand count must also be conducted in a manner that allows public observation of the entire process, including the opening of the ballot boxes or removal of machine printed ballots from their containers; the sorting, counting, notation of results; and the announcement of the final determinations. Lastly, the hand count should be conducted in a way to produce the following information: number of votes for each candidate; number of overvotes, undervotes, spoiled votes, and blank ballots cast; number of write-in ballots and the names written on such ballots; total number of ballots cast; and a record of judgment calls made regarding voter intent. Following the hand count this subsection allows for a jurisdiction, if it wishes, to run the ballots through a tabulating machine or scanner for verification.

Section 4(d).—"Application to Jurisdictions Conducting Elections with Direct Recording Electronic Voting Systems." This subsection allows a jurisdiction using a Direct Recording Electronic (DRE) Voting System to receive payments under this section if it certifies to the Election Assistance Commission that each system produces a paper record printout of the marked ballot.

Section (4)(d).—"Announcement of Posting of Results." This subsection requires a State or county upon completion of the hand count to announce the results to the public and post them on a public Internet site.

Section (4)(e).—"Use of Hand Count in Certification of Results." This subsection requires that the results of the hand count should be used solely for the purpose of certifying the results of the election and not be construed to affect the application or operation of a recount.

Section 5.—Study, Testing and Development of Products and Practices to Ensure Accessibility of Paper Ballot Verification and Casting for Certain Individuals—This section authorizes such sums as necessary for the Director of the National Institute of Standards and Technology to conduct a study to test and develop products as well as practices that ensure the accessibility of paper ballot verification and casting for: individuals with disabilities; individuals whose primary language is not English; and individuals with literacy difficulties.

Section 6.—Definitions—This section defines the terms "Administrator" as the Administrator of General Services and "States" as including the District of Colombia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the U.S. Virgin Islands.

COMMITTEE CONSIDERATION OF THE LEGISLATION

INTRODUCTION & REFERRAL

On January 17, 2008, Mr. Holt, along with 36 members of the House, introduced H.R. 5036, which was referred to the Committee on House Administration, and additionally to the Committee on Science and Technology for consideration of matters under the jurisdiction of that committee.

HEARINGS

The Committee on House Administration held hearings during the 1st Session of the 110th Congress on matters relating to H.R. 5036.

On March 15, 2007, the Subcommittee on Elections held a hearing titled: "Election Reform Hearing: Machines & Software." The following members were present at the hearing: Subcommittee Chair Zoe Lofgren, Juanita Millender-McDonald, Susan Davis, and Kevin McCarthy.

Witnesses

Panel 1:

1. The Honorable Eric Clark—Secretary of State, Missouri
2. Dr. Diane C. Golden—Director, Missouri Assistive Technology
3. Dr. Ted Selker—Director, Voting Technology Project, Massachusetts Institute of Technology
4. Mr. Kelly Pierce—Disability Specialist, Cook County (IL) State Attorney Office

Panel 2:

1. Dr. Brit Williams—Professor, Kennesaw State University
2. Dr. David Wagner—Associate Professor, University of California, Berkeley
3. Mr. Brain Behlendorf—Founder & Chief Technology Officer, CallabNet
4. Mr. Hugh Gallagher—Managing Director, Election System Acquisition & Management Services, Inc.
5. Mr. Matt Zimmerman—Staff Attorney, Electronic Frontier Foundation

On March 20, 2007, the Committee on House Administration Subcommittee on Elections held a hearing titled "Election Reform Hearing: Auditing." The following members were present at the hearing: Subcommittee Chair Zoe Lofgren, Charlie Gonzalez, Susan Davis, Kevin McCarthy, and Vern Ehlers.

Witnesses

Panel 1:

1. Ion Sancho—Supervisor of Elections, Leon County (FL)
2. Matt Damschroder—Director, Franklin County (OH) Board of Elections

Panel 2:

1. Candice Hoke—Director, Cleveland State University Center for Election Integrity
2. R. Doug Lewis—Executive Director, National Association of Election Officials
3. Lawrence Norden—Counsel, Brennan Center for Justice

4. Tammy Patrick—Federal Compliance Officer, Maricopa County (AZ) Elections Department

5. Pamela Smith—President, VerifiedVoting.ORG

In addition to these hearings, the late Chairwoman Juanita Millender-McDonald and Ranking Member Vernon Ehlers hosted a voting machine forum on March 15, 2007. This forum gave Members of Congress and their staff an opportunity to learn more about voting systems first-hand. The following companies were in attendance: Avante, Automark, Diebold Election Systems, Hart InterCivic, Inc., IVS—Vote by Phone, Perfect Voting System, Sequoia Voting Systems, Inc., and Unisyn Voting Solutions.

MARKUP

On Wednesday, April 2, 2008, the Committee on House Administration met to mark up H.R. 5036. The Committee ordered reported favorably H.R. 5036, as amended, by a voice vote. A quorum was present.

MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

COMMITTEE RECORD VOTES

Clause 3(b) of House rule XIII requires the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, to be printed in the committee report. There were no recorded votes. The first amendment introduced was an amendment in the nature of a substitute by Ms. Lofgren. All of the following votes, until the vote on the Lofgren substitute, were on amendments to the Lofgren substitute.

Lofgren amendment in the nature of a substitute

Offered by Ms. Lofgren. The substitute addresses a number of concerns that were raised by disability groups and state and local government stakeholders during the timeframe between introduction of the original bill and the mark-up. The substitute makes several changes to the legislation, while keeping the core purpose of the bill to providing a voter verifiable paper and auditable paper trail. These changes, particularly to the audit section, DRE retrofitting, and the use of funding for backup paper ballots, were specifically made to reflect many of the concerns expressed by the civil rights and election official advocates. The substitute reimburses jurisdictions for retrofitting paperless touch-screen voting machines (DREs) with systems that produce a voter verifiable paper record, obtaining backup paper ballots in the event of failure of electronic voting systems, and conducting a manual audit of federal, as well as any state and local, elections in November 2008 in no less than two percent of the precincts.

The Lofgren substitute changes the original bill in the following areas:

Reimbursement Authority—The U.S. Election Assistance Commission (EAC) shall administer funds and reimburse jurisdictions for the costs related to implementing the provisions of this bill in lieu of the Administrator of the General Services.

Authorized Funding—Authorized funding amounts have been changed to "such sums as necessary."

Retrofitting Paperless Touch Screen Voting Machines (DREs)—Section 2(b) has been added to authorize the EAC to reimburse states for reasonable costs incurred by retrofitting paperless DREs with systems that produce a voter verifiable record and obtaining printers to produce the paper records.

Paper Ballots—Section 2(c) emergency paper ballots have been replaced with backup paper ballots.

Election Auditor—The entity selected to oversee the administration of the audit shall now be selected by the State and the entity must meet a general standard of independence as defined by the State.

Minimum Percentage of Audits Conducted—Audits shall be conducted in no less than two percent of the precincts, auditing units, or Congressional districts involved, rather than a minimum of three percent.

Application of Audit Section to Jurisdictions Conducting Elections with Direct Recording Electronic Voting Systems (DREs)—Section 4(d) has been added to allow a jurisdiction using a DRE to receive payments under the audit section if it certifies to the EAC that each system produces a paper record printout of the marked ballot.

Alternative Ballot Sampling Methods Approval by the National Institute of Standards and Technology—has been removed.

Ehlers' amendments to the Lofgren substitute

The first vote of the mark up was on a bloc of three amendments offered by Mr. Ehlers to amend the Lofgren substitute. The first amendment, Ehlers Amendment # 1, adds language that allows for audits to commence 48 hours after states or relevant jurisdictions involved announce the unofficial vote count. The second amendment, Ehlers Amendment #2, adds language that requires no hand count to commence until at least 8 hours after the polls close and requires the ballots to be in a secured location until the hand count commences. Lastly, the third amendment, Ehlers Amendment #4, adds language that ensures hand counting teams when conducting a hand count of the election results have equal representation from both political parties of the candidates who received the two greatest numbers of aggregate votes cast. The amendments en bloc were passed by a voice vote.

Following the passage of the en bloc amendments, the Committee then held a vote on the final amendment offered by Mr. Ehlers, Ehlers Amendment #3. This amendment adds language that requires that after the hand count is complete that the ballots be run through a tabulating machine or scanner for verification of the tally, if such a machine or scanner is available. During debate on the amendment the Committee agreed to amend Ehlers Amendment #3 to remove the requirement and instead give states the option to run the ballots through a tabulating machine or scanner for verification of the tally. As a result, Ehlers Amendment #3 was changed to include "may run the ballots through a tabulating machine or scanner for verification of the tally, if such a machine or scanner is available." The amendment, as amended, was agreed to by a voice vote.

The Lofgren substitute, as amended, was then adopted by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) rule XIII of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

GENERAL PEFORMANCE GOALS AND OBJECTIVES

The Committee states, with respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, that the goal and objective of H.R. 5036 is to provide an incentive to States and counties that want to implement a system to prevent non-auditable, non-resolvable problems in the November 2008 general election.

CONSTITUTIONAL AUTHORITY

In compliance with clause 3(d)(1) of rule XIII, the Committee states that Article I, Section 4 of the U.S. Constitution grants Congress the authority to make laws governing the time, place and manner of holding Federal elections.

EARMARK IDENTIFICATION

Pursuant to clause 9 of rule XXI, H.R. 5036, the Emergency Assistance for Secure Elections Act of 2008, does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any committee on a bill or joint resolution to include a committee statement on the extent to which the bill or joint resolution is intended to preempt state or local law. H.R. 5036 is intended to apply in all States and preempt laws to the contrary in their application to Federal elections.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

Summary: H.R. 5036 would amend the Help America Vote Act of 2002 to require the Election Assistance Commission (EAC) to reimburse states for the costs of converting to voting systems that produce paper ballots. The legislation also would reimburse any jurisdiction for the costs of conducting manual audits or hand recounts of the federal election to be held in November 2008. Finally, the legislation would direct the National Institute of Standards and Technology (NIST) to study systems for verifying paper ballots.

CBO estimates that implementing H.R. 5036 would cost $685 million in 2009, assuming appropriation of the necessary amounts. Enacting the bill would not affect direct spending or revenues. H.R. 5036 contains no intergovernmental or private sector mandates as

defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5036 is shown in the following table. The costs of this legislation fall within budget functions 250 (general science, space, and technology) and 800 (general government).

	By fiscal year, in millions of dollars—				
	2009	2010	2011	2012	2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Ballot Verification:					
Estimated Authorization Level	554	0	0	0	0
Estimated Outlays	554	0	0	0	0
Hand Count of Paper Ballots:					
Estimated Authorization Level	95	0	0	0	0
Estimated Outlays	95	0	0	0	0
Manual Audits of Elections:					
Estimated Authorization Level	10	0	0	0	0
Estimated Outlays	10	0	0	0	0
Other Provisions:					
Estimated Authorization Level	25	0	0	0	0
Estimated Outlays	25	0	0	0	0
Reporting Provisions:					
Estimated Authorization Level	1	0	0	0	0
Estimated Outlays	1	0	0	0	0
Total Proposed Changes:					
Estimated Authorization Level	685	0	0	0	0
Estimated Outlays	685	0	0	0	0

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the end of fiscal year 2008, that the necessary amounts will be appropriated, and that outlays will follow historical spending patterns for similar programs. CBO estimates that implementing H.R. 5036 would cost $685 million in 2009, assuming appropriation of the estimated amounts.

Ballot verification: Section 2 of H.R. 5036 would authorize the appropriation of whatever sums are necessary for grants to states to pay for the cost of providing a permanent paper record of each voter's ballot. Activities covered would include purchasing or upgrading voting systems, and counting backup paper ballots from certain types of electronic voting machines. Based on information from the EAC about the number and types of voting machines currently in use, CBO estimates that implementing this provision would cost $554 million in 2009, assuming appropriation of the necessary amounts.

Hand count of paper ballots: Section 4 would authorize the appropriation of whatever sums are necessary for the EAC to reimburse states for the costs they incur to hand count votes cast on paper ballots used in the November 2008 elections. Using information from the EAC about the number of ballots cast in the 2006 elections, CBO estimates that, if all states found it necessary to conduct a hand count of ballots, the costs nationwide could reach nearly $270 million. However, for this estimate, CBO assumes, based on information from the EAC, that fewer than 20 states would have closely contested elections that would need hand counts. Under that assumption, CBO estimates that implementing this provision would cost about $95 million in 2009, assuming appropriation of the necessary amounts.

Manual audits of elections: Section 3 would authorize the appropriation of whatever sums are necessary for the EAC to reimburse states for costs they incur to conduct manual audits of two percent of the results of regularly scheduled general elections in November 2008. CBO expects that such audits would entail a review about 3,500 of the almost 180,000 voting precincts in the United States. Using information from the EAC regarding the average number of voters per precinct and an average audit cost per ballot of $2.20, CBO estimates that implementing this provision would cost about $10 million in 2009.

Other provisions: Implementing H.R. 5036 would increase the responsibilities of the EAC. The agency expects that it would need additional staff to distribute funds, manage the new programs, monitor spending, and prepare audits. Based on information from the EAC, CBO estimates that additional costs for those activities would total $25 million in 2009.

Reporting provisions: H.R. 5036 also would authorize the appropriation of whatever sums are necessary for NIST to study and report to the Congress on ballot verification methods for individuals with disabilities. Based on information from NIST, CBO estimates that implementing this provision would cost $1 million in the 2009.

Intergovernmental and private-sector impact: H.R. 5036 contains no intergovernmental or private sector mandates as defined in UMRA. The bill would benefit state, local, and tribal governments by allowing them to apply for reimbursement from the EAC for certain costs they incur during the 2008 general election.

Estimate prepared by: Federal costs: Matthew Pickford; Impact on state, local, and tribal governments: Elizabeth Cove; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

MINORITY VIEWS OF THE HONORABLE VERNON J. EHLERS, THE HONORABLE DAN LUNGREN, AND THE HONORABLE KEVIN McCARTHY

H.R. 5036: EMERGENCY ASSISTANCE FOR SECURE ELECTIONS ACT OF 2008

The Committee on House Administration ordered H.R. 5036 reported favorably by voice vote. H.R. 5036 provides optional grant programs for states or jurisdictions that seek to convert to a paper based voting system or a voting system that produces a paper record, to have an ample supply of emergency paper ballots, and to conduct post election audits or tally election results by hand for the 2008 election. While we applaud the Committee for retreating from its support of overly prescriptive legislation in the area of elections, H.R. 5036 contains provisions that pose concern regarding potential consequences for states or jurisdictions that choose to participate.

VOTING MACHINES

Over the past two centuries, we have made significant improvements to our election process. The Committee and the Congress were successful in working in a bipartisan manner to improve our nation's voting systems with the passage of the Help America Vote Act of 2002 (HAVA). Under HAVA's provisions pertaining to voting machine replacement, states and local election administrators had the flexibility to determine what qualifying voting system was preferable in their specific locale based on demographics. Some states, like Michigan, purchased optical scan voting machines while other states and jurisdictions purchased paperless Direct-Recording Electronic Voting Machines (DRE) to satisfy HAVA requirements.

We are pleased with the successful deployment of HAVA-compliant voting machines across the nation. Over the past several years, numerous elections have been conducted without evidence of voting machine malfunction. In the 2006 election cycle, the only significant allegation that voting machines malfunctioned was proven to be without merit. The allegation arose from the election results for the Congressional race in Florida's Thirteenth Congressional District which showed a significant amount of undervotes. The undervotes were alleged to be caused by machine malfunction rather than poor ballot design or abstention by voters for that race. The Committee established a Task Force that directed the Government Accountability Office (GAO) to conduct an investigation of the voting machines used in Florida's Thirteenth Congressional District. After a 10-month long investigation that involved extensive testing of the voting machines, the GAO concluded that the voting machines operated properly and accurately recorded election ballots.

H.R. 5036 would provide an incentive for states and jurisdictions that currently use paperless DRE voting systems to change to voting systems that are paper based or can produce a paper record. The proponents of H.R. 5036 argue that voter verifiable paper records would provide increased confidence in our voting systems. While we are not opposed to a state or jurisdiction's choice to convert to a voting system that provides a voter verifiable record, we question the necessity and utility of this bill.

Over the past year, election officials, state and Federal legislators, county and city clerks, election machine vendors, and interested parties from across the country have voiced concern to the Committee about implementing changes to the administration of Federal elections during a Presidential election year. During our Committee hearings last year for H.R. 811, "The Voter Confidence and Increased Accessibility Act of 2007," testimony presented demonstrated the severe burden that would be placed on election officials if they were required to change their voting systems for the 2008 Presidential election. With the November elections a mere 7 months away, we are skeptical of states and local jurisdictions converting to a different voting system, even if sufficient funds were available. It appears that the only states or jurisdictions that qualify and would likely seek reimbursement would be states that have already committed to converting to a paper based voting system for the November 2008 elections, e.g. Florida. It is reckless for the Federal government to encourage states to hastily switch voting machines in a Presidential election year.

MANUAL AUDITS

H.R. 5036 provides reimbursement for the costs of manual audits of any of the regularly scheduled general elections for Federal office in November 2008. While we support auditing election results, we are not convinced that the manual audits contained in H.R. 5036 should be so extensive or overly prescriptive. Although the administration of manual audits is optional, we have reservations about establishing an unsubstantiated threshold for the number of precincts and races that are subject to an audit. States and local jurisdictions should be given flexibility to conduct audits without specifying a percentage of ballots to be counted and should also have the option to exempt certain Federal elections from a manual count, if the election was decided by a substantial margin of victory. Further, under the audit structure, elections subject to an audit cannot be certified until after completing the audit, resolving discrepancies discovered in the audit, and submitting the audit report to the Election Assistance Commission. Requiring an audit to be completed before reporting the official election results for some states could be an impediment to a timely and efficient recount of a presidential election. States and local jurisdictions are responsible for administering Federal elections and have the wisdom of how and when to perform audits.

HAND COUNTING PAPER BALLOTS

H.R. 5036 also allows states and jurisdictions to receive funding if they elect to hand count paper ballots to determine election results for all Federal elections, rather than using a tabulating ma-

chine or scanner to count ballots. While we respect decisions by certain states and jurisdictions to tally votes by hand based on their demographics and resources, we do not support providing a Federal subsidy to encourage states to switch to hand counting. Further, hand counts have been documented to be the most inaccurate means of tabulating ballots as they are more prone to human error. We also have concerns with the increased potential for fraud in counting paper ballots by hand. Mr. Capuano during Committee markup expressed his concerns regarding hand counting paper ballots. Specifically, he noted:

> "The only elections I have ever seen stolen is when there's nothing but a hand count . . . that's the only elections I've ever seen stolen." . . . "A hand count can get stolen, and I can tell you how to do it." ". . . Local officials are perfectly capable of making these decisions . . . [those] people have been running these elections for a long time . . . they know how to do it . . . we don't have to hold their hand at every step along the way."

We should strive to make reforms to our elections process that improve the voter confidence, however, we are skeptical that providing financial incentives to states and local jurisdictions to perform a hand count of paper ballots in lieu of a tabulation using the electronic tabulator will increase voter confidence in the outcome of an election. In fact, it may decrease it.

We are pleased that the Committee adopted the amendment offered by Mr. Ehlers that requires states or jurisdictions to wait at least 8 hours before the polls close before performing a hand count. We want to ensure that poll workers responsible for the hand count are not required to work through the night after having worked at least 12 hours at the polls all day on Election Day. The Committee also accepted the amendment offered by Mr. Ehlers, to provide that the team of individuals conducting the hand count shall consist of an equal numbers of representatives from each of the major political parties. This amendment is crucial to ensure fairness and integrity when counting ballots by hand.

CONCLUSION

When contemplating Federal election reform, the Committee should be mindful not to roll back the progress made through the enactment of the Help America Vote Act (HAVA), and at the same time, not to jeopardize the successful administration of our 2008 General Election. Providing a grant program to induce states and local jurisdictions to make widespread changes to the electoral process, especially in such a short time frame, may have unintended consequences. We suspect given the current fiscal climate that the Federal government will be unwilling to expend additional funding to reimburse states or jurisdictions that elect to participate in the grant programs outlined in H.R. 5036.

VERNON J. EHLERS.
DANIEL E. LUNGREN.
KEVIN MCCARTHY.

Appendix A

BART GORDON, TENNESSEE
CHAIRMAN

RALPH M. HALL, TEXAS
RANKING MEMBER

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE AND TECHNOLOGY
SUITE 2320 RAYBURN HOUSE OFFICE BUILDING
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http://science.house.gov

April 8, 2008

The Honorable Robert A. Brady
Chairman
Committee on House Administration
U.S. House of Representatives
1309 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Brady:

I write to you regarding H.R. 5036, the "Emergency Assistance for Secure Elections Act of 2008." This legislation was initially referred to both the Committee on House Administration and the Committee on Science and Technology.

H.R. 5036 was marked up by the Committee on House Administration on April 2, 2008. I recognize and appreciate your desire to bring this legislation before the House in an expeditious manner, and, accordingly, I will waive further consideration of this bill in Committee. However, agreeing to waive consideration of this bill should not be construed as the Committee on Science and Technology waiving its jurisdiction over H.R. 5036.

Further, I request your support for the appointment of Science and Technology Committee conferees during any House-Senate conference convened on this legislation on provisions of the bill that are within the Committee's jurisdiction. I also ask that a copy of this letter and your response be placed in the legislative report and the Congressional Record during consideration of this bill.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

Bart Gordon

BART GORDON
Chairman

cc: The Honorable Ralph M. Hall, Ranking Member
The Honorable Vernon J. Ehlers, Ranking Member, Committee on House Administration
The Honorable John Sullivan, Parliamentarian

ROBERT A. BRADY, PENNSYLVANIA
CHAIRMAN

VERNON J. EHLERS, MICHIGAN
RANKING MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON HOUSE ADMINISTRATION
1309 Longworth House Office Building
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April 8, 2008

The Honorable Bart Gordon, Chairman
Committee on Science and Technology
2320 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your willingness to expedite floor consideration of H.R. 5036, the Emergency Assistance for Secure Elections Act of 2008.

I appreciate your willingness to waive rights to further consideration of H.R. 5036, even though your Committee has a jurisdictional interest in the matter and has received an additional referral. Of course, this waiver does not prejudice any further jurisdictional claims by your Committee over this legislation or similar language. Furthermore, I agree to support your request for appointment of conferees from the Committee on Science and Technology if a conference is held on this matter.

This exchange of letters will be placed in the committee report and inserted in the Congressional Record as part of the consideration of the bill on the House floor. Thank you for the cooperative spirit in which you have worked regarding this matter and others between our respective committees.

Sincerely,

Robert A. Brady
Chairman

Appendix B

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April 1, 1008

The Honorable Robert A. Brady
Chair
Committee on House Administration
Washington, D.C. 20515

Dear Representative Brady:

I am writing to urge you to vote in favor of the Emergency Assistance for Secure Elections Act of 2008 (HR 5036) in tomorrow's House Administration committee meeting.

As the November 2008 general election approaches, voters are still at high risk of disenfranchisement because the mechanics of our democracy are not yet in place. Fifteen states still deploy unreliable and insecure paperless direct record electronic (DRE) voting systems. Voters must cast their ballots on these systems and hope that their ballots are counted as cast even though these machines have proven reliability and security problems. No meaningful recount can occur on these machines and no audit can be conducted. The provisions in the Emergency Assistance for Secure Elections Act of 2008 (HR 5036) represent much needed federal assistance to states to protect basic voting rights.

The security and reliability problems with DRE machines have been well documented. Both the state of California with the Top to Bottom Review and the state of Ohio with the EVEREST study have documented numerous security vulnerabilities in these systems and taken action to protect voters. Additionally, a number of academic and public policy experts have recommended that the shortcomings of these systems be addressed. Finally, there have been a number of incidents in which voters have been disenfranchised and election outcomes thrown into doubt because the machines have simply failed to work properly.

Several provisions in the Emergency Assistance for Secure Elections Act of 2008 provide critical stop gap measures to insure that states have the resources they need to protect voters from the problems these machines present.

- The legislation allow states with paperless voting systems to "opt-in" to a plan to replace these systems with optical scan systems or to retrofit these systems with printers. This provision will allow states who have the will to change to

systems which produce paper records or paper ballots to be assisted by federal funding. If voting systems produce a paper record verified by the voter then at the very least there is an opportunity for a recount if the results are questioned.

- The legislation also allows states to "opt in" to receive funding if they wish to conduct post election audits. This is a critical element of this legislation. All voting systems fail – even paper based systems. However, if the voting system is audited by a comparison of a sample of paper ballots - verified by the voter - and the electronic tally produced by the voting system, election officials can be alerted to miscounts and take remedial action to attain correct vote count.

- The legislation also allows states to be reimbursed for costs associated with the provision of emergency paper ballots. If a voting jurisdiction only has electronic systems deployed and these systems break down or fail to start, voters must have a way of casting a ballot. This provision gives states the resources they need to ensure that voters can still cast ballots even if electronic voting systems fail.

We urge you to vote in favor of this legislation at tomorrow's committee meeting. It is a good first step to insuring that states have the funding they need to protect voters from mechanically based disenfranchisement.

Sincerely,

Bob Edgar
President
Common Cause

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April 1, 2008

Representative Zoe Lofgren
Chair, Subcommittee on Elections
Committee on House Administration
U.S. House of Representatives
Washington, DC 20515

Re: Support for H.R. 5036 "Emergency Assistance for Secure Elections Act of 2008"

Dear Representative Lofgren:

Thank you for your leadership and commitment to improving the security, reliability, and accessibility of our voting systems. In an election year that has garnered unprecedented voter interest, it is particularly important to have good policies and procedures in place in advance of the November elections.

In that light, we urge you to vote in support of H.R. 5036, the Emergency Assistance for Secure Elections Act of 2008 at the U.S. House Committee on House Administration meeting on April 2, 2008.

In 2006, I chaired the Brennan Center's Task Force on Voting System Security and was lead author of a comprehensive study on the security and reliability of our county's voting systems *The Machinery of Democracy: Protecting Elections in an Electronic World.* Our study found that all of the most commonly used electronic voting systems have significant security and reliability flaws. These findings have been echoed by academic and public policy experts and by studies commissioned by the California, Ohio, and Colorado Secretaries of State on voting systems in use in their jurisdictions.

News reports of machine problems during states' recent presidential primary elections provide a preview of potentially widespread machine failure and disenfranchisement in November. H.R. 5036 would reimburse jurisdictions for costs associated with the implementation of additional measures to protect voters from such failures. In particular, H.R. 5036 would allow jurisdictions to provide voters with emergency

paper ballots in the event of machine breakdowns, and allow jurisdictions to conduct post-election audits of paper records to verify vote totals and proper machine functioning.

In elections past, machine failures have caused long lines at the polls and disenfranchised untold numbers of voters. The provision for emergency paper ballots would ensure that every voter may have her vote counted and make it much less likely that voters will be forced to wait on long lines or turned away from the polls because of machine malfunction – these must important considerations for November's elections, when turnout is expected to be high.

Numerous studies, including the Brennan Center's 2007 report *Post-Election Audits: Restoring Trust in Elections*, have demonstrated the importance of auditing paper ballots and machine-produced paper records for ensuring the integrity of our elections and restoring public confidence in their results. Without this critical practice, election officials and the public have no way of knowing that votes were recorded accurately and that machines were performing without error. Post-election audits promote confidence in elections and provide election officials with important information about voting system performance that would allow them to improve elections in the future.

We strongly urge you to vote in support H.R. 5036 at tomorrow's Committee meeting. The bill's vote-protective measures are good steps towards making our nation's voting systems as secure and reliable as possible.

Sincerely,

Lawrence Norden
Counsel

December 19, 2007

The Honorable Rush Holt
U.S. House of Representatives
1019 Longworth House Office Building
Washington, D.C. 20515

Dear Representative Holt:

I am writing to commend your efforts to work with the National Association of Counties in developing legislation to offer a voluntary federal reimbursement and incentive grant for the purchase of paper ballot voting systems and emergency paper ballots and to fund demonstration audits.

Your draft legislation would offer reimbursement to those jurisdictions that have recently replaced electronic voting systems with a combination of paper ballots and non-tabulating ballot marking devices. It would also reimburse jurisdictions for the costs of providing emergency paper ballots in the event of a voting system failure and would provide an incentive for jurisdictions to purchase paper ballot systems prior to the Presidential election in 2008. Additionally, it would provide federal funding for a number of states or individual jurisdictions to conduct a demonstration audit involving a hand count of ballots cast in randomly chosen precincts.

The costs of administering elections for federal office are increasing dramatically and many counties that purchased electronic voting systems just a few years ago to comply with the Help America Vote Act are now struggling to absorb the additional costs associated with a return to paper. NACo takes no position on the specific incentives in your draft legislation as we neither support nor oppose any particular voting system or audit method, but many counties would welcome the opportunity to apply for federal reimbursement of expenses they are already incurring.

We have appreciated the opportunity to review your draft language and to offer meaningful input prior to introduction. As you know, there are jurisdictions that would be unable to apply for these grants due to eligibility restrictions, constraints of state law, the compressed timetable and other factors. However we anticipate that our members – as well as other stakeholders – will have an opportunity to vet these issues as the legislative process unfolds next year. We look forward to working with you through this process and will encourage the House Administration Committee to consider the incentive grant structure that you are proposing in lieu of one-size-fits-all mandates.

NACo recognizes that there will be few opportunities to appropriate funds for any new incentive grant prior to the Presidential election in 2008. In the absence of such funding, enactment of this legislation would provide jurisdictions with no assurance of reimbursement. However, we applaud your interest in this approach and look forward to working with you to seek appropriations for reimbursement and incentive grants for election administration expenditures that counties are already pursuing in addition to fully funding the Help America Vote Act.

If you have any questions about our position on this or on other proposed legislation, please contact Alysoun McLaughlin, Associate Legislative Director, at 202-942-4254 or amclaughlin@naco.org.

Sincerely yours,

Larry E. Naake

Larry E. Naake
Executive Director

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