

Union Calendar No. 360

110TH CONGRESS
2D SESSION

H. R. 5036

[Report No. 110–582, Part I]

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.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 17, 2008

Mr. HOLT (for himself, Mr. TOM DAVIS of Virginia, Mr. WEXLER, Mr. EMANUEL, Mr. CONYERS, Mr. LEWIS of Georgia, Mrs. MALONEY of New York, Ms. SCHAKOWSKY, Mr. WAXMAN, Mr. GEORGE MILLER of California, Mr. ABERCROMBIE, Mr. INSLEE, Ms. BALDWIN, Mr. FARR, Mr. RYAN of Ohio, Mr. HONDA, Mr. DOGGETT, Mr. BLUMENAUER, Mr. HARE, Mr. LOEBSACK, Mr. SIRES, Mr. FRANK of Massachusetts, Mr. WEINER, Mr. BERMAN, Mr. DEFazio, Ms. HIRONO, Mr. GRIJALVA, Mr. DAVIS of Illinois, Mr. ROTHMAN, Mr. OLVER, Mr. FATTAH, Mr. DOYLE, Ms. KAPTUR, Ms. WATSON, Mr. HINCHEY, Mr. KLEIN of Florida, and Mr. CROWLEY) introduced the following bill; which was referred to the Committee on House Administration, and in addition to the Committee on Science and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

APRIL 14, 2008

Additional sponsors: Mrs. CAPPS, Mr. PRICE of North Carolina, Ms. SUTTON, Mr. ELLISON, Mr. MCGOVERN, Mrs. TAUSCHER, Ms. GIFFORDS, Ms. CORRINE BROWN of Florida, Mr. BOYD of Florida, Mr. THOMPSON of California, Mr. AL GREEN of Texas, Mr. GORDON of Tennessee, Mr. LEVIN, Mr. ALTMIRE, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. MORAN of Virginia, Ms. WASSERMAN SCHULTZ, Mr. WYNN, Ms. WOOLSEY, Ms. JACKSON-LEE of Texas, Mr. PALLONE, Mr. GENE GREEN of Texas, Ms. KILPATRICK, Mr. COOPER, Mr. JACKSON of Illinois, Ms.

CLARKE, Mr. PASTOR, Mr. CHANDLER, Mr. BECERRA, Mr. COHEN, Mr. KILDEE, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. BARROW, Ms. LINDA T. SÁNCHEZ of California, Mr. DELAHUNT, Mr. TIERNEY, Mr. STARK, Ms. SCHWARTZ, Ms. SHEA-PORTER, Mr. COURTNEY, Mr. CLAY, Ms. DEGETTE, Mr. BRALEY of Iowa, Mr. ENGEL, Mr. PAYNE, Mr. MATHESON, Mr. JOHNSON of Georgia, Ms. MATSUI, Mrs. LOWEY, Mr. RANGEL, Mr. McNULTY, Mr. BOUCHER, Mr. UDALL of Colorado, Ms. LEE, Mr. MURTHA, and Mr. SNYDER

APRIL 14, 2008

Reported from the Committee on House Administration with amendments

[Strike out all after the enacting clause and insert the part printed in *italic*]

APRIL 14, 2008

Committee on Science and Technology discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on January 17, 2008]

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Emergency Assistance*
 5 *for Secure Elections Act of 2008”.*

1 **SEC. 2. PAYMENTS TO CERTAIN JURISDICTIONS CON-**
2 **DUCTING 2008 GENERAL ELECTIONS.**

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

5 (1) *IN GENERAL.*—*The Election Assistance Com-*
6 *mission shall pay to each eligible jurisdiction an*
7 *amount equal to the sum of the following:*

8 (A) *The documented reasonable costs paid*
9 *or incurred by such jurisdiction to replace any*
10 *voting systems used to conduct the general elec-*
11 *tions for Federal office held in November 2006*
12 *that did not use or produce a paper ballot*
13 *verified by the voter or a paper ballot printout*
14 *verifiable by the voter at the time the vote is cast*
15 *with paper ballot voting systems.*

16 (B) *The documented reasonable costs paid*
17 *or incurred by such jurisdiction to obtain non-*
18 *tabulating ballot marking devices that are acces-*
19 *sible for individuals with disabilities in accord-*
20 *ance with the requirements of section 301(a)(3)*
21 *of the Help America Vote Act of 2002.*

22 (C) *The documented reasonable costs paid*
23 *or incurred by such jurisdiction to obtain ballot*
24 *marking stations or voting booths for the protec-*
25 *tion of voter privacy.*

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

4 (E) *The documented reasonable costs paid*
5 *or incurred by such jurisdiction to obtain pre-*
6 *cinct-based equipment that tabulates paper bal-*
7 *lots or scans paper ballots.*

8 (F) *The documented reasonable administra-*
9 *tive costs paid or incurred by such jurisdiction*
10 *that are associated with meeting the require-*
11 *ments for an eligible jurisdiction.*

12 (2) *ELIGIBLE JURISDICTION DEFINED.—In this*
13 *subsection, an “eligible jurisdiction” means a juris-*
14 *isdiction that submits to the Commission (and, in the*
15 *case of a county or equivalent jurisdiction, provides*
16 *a copy to the State), at such time and in such form*
17 *as the Commission may require, an application con-*
18 *taining—*

19 (A) *assurances that the jurisdiction con-*
20 *ducted regularly scheduled general elections for*
21 *Federal office in November 2006 using (in whole*
22 *or in part) a voting system that did not use or*
23 *produce a paper ballot verified by the voter or a*
24 *paper ballot printout verifiable by the voter at*
25 *the time the vote is cast;*

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

5 (C) assurances that the jurisdiction has ob-
6 tained or will obtain a sufficient number of non-
7 tabulating ballot marking devices that are acces-
8 sible for individuals with disabilities in accord-
9 ance with the requirements of section 301(a)(3)
10 of the Help America Vote Act of 2002;

11 (D) assurances that the jurisdiction has ob-
12 tained or will obtain a sufficient number of bal-
13 lot marking stations or voting booths for the pro-
14 tection of voter privacy;

15 (E) assurances that the jurisdiction has ob-
16 tained or will obtain a sufficient number of
17 paper ballots;

18 (F) such information and assurances as the
19 Commission may require to make the determina-
20 tions under paragraph (1); and

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

23 (3) DETERMINATIONS OF REASONABLENESS OF
24 COSTS.—The determinations under paragraph (1) of

1 *whether costs paid or incurred by a jurisdiction are*
 2 *reasonable shall be made by the Commission.*

3 (4) *PAPER BALLOT VOTING SYSTEM DEFINED.—*

4 *In this subsection, a “paper ballot voting system”*
 5 *means a voting system that uses a paper ballot*
 6 *marked by the voter by hand or a paper ballot*
 7 *marked by the voter with the assistance of a non-tab-*
 8 *ulating ballot marking device described in paragraph*
 9 *(1)(B).*

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

13 (1) *IN GENERAL.—The Commission shall pay to*
 14 *each eligible jurisdiction an amount equal to the doc-*
 15 *umented reasonable costs paid or incurred by such ju-*
 16 *risdiction to retrofit direct recording electronic voting*
 17 *systems so that the systems will produce a voter*
 18 *verifiable paper record of the marked ballot for*
 19 *verification by the voter at the time the vote is cast,*
 20 *including the costs of obtaining printers to produce*
 21 *the records.*

22 (2) *ELIGIBLE JURISDICTION DEFINED.—In this*
 23 *subsection, an “eligible jurisdiction” means a juris-*
 24 *diction that submits to the Commission (and, in the*
 25 *case of a county or equivalent jurisdiction, provides*

1 *a copy to the State), at such time and in such form*
 2 *as the Commission may require, an application con-*
 3 *taining—*

4 *(A) assurances that the jurisdiction has ob-*
 5 *tained or will obtain a printer for and retrofit*
 6 *each direct recording electronic voting system*
 7 *used to conduct the general elections for Federal*
 8 *office held in November 2008 so that the system*
 9 *will produce a voter verifiable paper record of*
 10 *the marked ballot for verification by the voter;*

11 *(B) such information and assurances as the*
 12 *Commission may require to make the determina-*
 13 *tions under paragraph (1); and*

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

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

20 *(c) REIMBURSEMENT FOR PROVISION OF BACKUP*
 21 *PAPER BALLOTS BY JURISDICTIONS USING DIRECT RE-*
 22 *CORDING ELECTRONIC VOTING SYSTEMS.—*

23 *(1) IN GENERAL.—The Commission shall pay to*
 24 *each eligible jurisdiction an amount equal to the doc-*
 25 *umented reasonable costs paid or incurred by such ju-*

1 *risdiction to obtain, deploy, and tabulate backup*
2 *paper ballots (and related supplies and equipment)*
3 *that may be used in the event of the failure of a direct*
4 *recording electronic voting system in the regularly*
5 *scheduled general elections for Federal office to be held*
6 *in November 2008.*

7 (2) *ELIGIBLE JURISDICTION DEFINED.*—*In this*
8 *subsection, an “eligible jurisdiction” means a juris-*
9 *diction that submits to the Commission (and, in the*
10 *case of a county or equivalent jurisdiction, provides*
11 *a copy to the State), at such time and in such form*
12 *as the Commission may require, an application con-*
13 *taining—*

14 (A) *assurances that the jurisdiction will*
15 *post, in a conspicuous manner at all polling*
16 *places at which a direct recording electronic vot-*
17 *ing system will be used in such elections, a no-*
18 *tice stating that backup paper ballots are avail-*
19 *able at the polling place and that a voter is enti-*
20 *tled to use such a ballot upon the failure of a*
21 *voting system;*

22 (B) *assurances that the jurisdiction counts*
23 *each such backup paper ballot cast by a voter as*
24 *a regular ballot cast in the election, and does not*
25 *treat it (for eligibility purposes) as a provisional*

1 *ballot under section 302(a) of the Help America*
 2 *Vote Act of 2002, unless the individual casting*
 3 *the ballot would have otherwise been required to*
 4 *cast a provisional ballot;*

5 *(C) such information and assurances as the*
 6 *Commission may require to make the determina-*
 7 *tions under paragraph (1); and*

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

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

14 *(d) AMOUNTS.—There are authorized to be appro-*
 15 *priated to the Commission such sums as may be necessary*
 16 *for payments under this section. Any amounts appropriated*
 17 *pursuant to the authorization under this subsection shall*
 18 *remain available until expended.*

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

21 *(a) PAYMENTS.—*

22 *(1) ELIGIBILITY FOR PAYMENTS.—If a State con-*
 23 *ducts manual audits of the results of any of the regu-*
 24 *larly scheduled general elections for Federal office in*
 25 *November 2008 (and, at the option of the State, con-*

1 *ducts audits of elections for State and local office held*
2 *at the same time as such election) in accordance with*
3 *the requirements of this section, the Commission shall*
4 *make a payment to the State in an amount equal to*
5 *the documented reasonable costs incurred by the State*
6 *in conducting the audits.*

7 (2) *CERTIFICATION OF COMPLIANCE AND*
8 *COSTS.—*

9 (A) *CERTIFICATION REQUIRED.—In order*
10 *to receive a payment under this section, a State*
11 *shall submit to the Commission, in such form as*
12 *the Commission may require, a statement con-*
13 *taining—*

14 (i) *a certification that the State con-*
15 *ducted the audits in accordance with all of*
16 *the requirements of this section;*

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

19 (iii) *such other information and assur-*
20 *ances as the Commission may require.*

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

1 (C) *DETERMINATION OF REASONABLENESS*
2 *OF COSTS.*—*The determinations under this para-*
3 *graph of whether costs incurred by a State are*
4 *reasonable shall be made by the Commission.*

5 (3) *TIMING OF PAYMENTS.*—*The Commission*
6 *shall make the payment required under this section to*
7 *a State not later than 30 days after receiving the*
8 *statement submitted by the State under paragraph*
9 *(2).*

10 (4) *MANDATORY IMMEDIATE REIMBURSEMENT OF*
11 *COUNTIES AND OTHER JURISDICTIONS.*—*If a county*
12 *or other jurisdiction responsible for the administra-*
13 *tion of an election in a State incurs costs as the result*
14 *of the State conducting an audit of the election in ac-*
15 *cordance with this section, the State shall reimburse*
16 *the county or jurisdiction for such costs immediately*
17 *upon receiving the payment from the Commission*
18 *under paragraph (3).*

19 (5) *AUTHORIZATION OF APPROPRIATIONS.*—
20 *There are authorized to be appropriated to the Com-*
21 *mission such sums as may be necessary for payments*
22 *under this section. Any amounts appropriated pursu-*
23 *ant to the authorization under this subsection shall*
24 *remain available until expended.*

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

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

9 (2) *The State shall select an appropriate entity*
10 *to oversee the administration of the audit, in accord-*
11 *ance with such criteria as the State considers appro-*
12 *priate consistent with the requirements of this section,*
13 *except that the entity must meet a general standard*
14 *of independence as defined by the State.*

15 (3) *The State shall determine whether the units*
16 *in which the audit will be conducted will be precincts*
17 *or some alternative auditing unit, and shall apply*
18 *that determination in a uniform manner for all au-*
19 *dits conducted in accordance with this section.*

20 (4) *The State shall select the precincts or alter-*
21 *native auditing units in which audits are conducted*
22 *in accordance with this section in a random manner*
23 *following the election after the final unofficial vote*
24 *count (as defined by the State) has been announced,*
25 *such that each precinct or alternative auditing unit*

1 *in which the election was held has an equal chance*
2 *of being selected, subject to paragraph (9), except that*
3 *the State shall ensure that at least one precinct or al-*
4 *ternative auditing unit is selected in each county in*
5 *which the election is held.*

6 *(5) The audit shall be conducted in not less than*
7 *2 percent of the precincts or alternative auditing*
8 *units in the State (in the case of a general election*
9 *for the office of Senator) or the Congressional district*
10 *involved (in the case of an election for the office of*
11 *Representative in, or Delegate or Resident Commis-*
12 *sioner to, the Congress).*

13 *(6) The State shall determine the stage of the*
14 *tabulation process at which the audit will be con-*
15 *ducted, and shall apply that determination in a uni-*
16 *form manner for all audits conducted in accordance*
17 *with this section, except that the audit shall com-*
18 *mence within 48 hours after the State or jurisdiction*
19 *involved announces the final unofficial vote count (as*
20 *defined by the State) in each precinct in which votes*
21 *are cast in the election which is the subject of the*
22 *audit.*

23 *(7) With respect to each precinct or alternative*
24 *audit unit audited, the State shall ensure that a voter*
25 *verified paper ballot or paper ballot printout*

1 *verifiable by the voter at the time the vote is cast is*
2 *available for every vote cast in the precinct or alter-*
3 *native audit unit, and that the tally produced by*
4 *counting all of those paper ballots or paper ballot*
5 *printouts by hand is compared with the cor-*
6 *responding final unofficial vote count (as defined by*
7 *the State) announced with respect to that precinct or*
8 *audit unit in the election.*

9 *(8) Within each precinct or alternative audit*
10 *unit, the audit shall include all ballots cast by all in-*
11 *dividuals who voted in or who are under the jurisdic-*
12 *tion of the precinct or alternative audit unit with re-*
13 *spect to the election, including absentee ballots (sub-*
14 *ject to paragraph (9)), early ballots, emergency bal-*
15 *lots, and provisional ballots, without regard to the*
16 *time, place, or manner in which the ballots were cast.*

17 *(9) If a State establishes a separate precinct for*
18 *purposes of counting the absentee ballots cast in the*
19 *election and treats all absentee ballots as having been*
20 *cast in that precinct, and if the state does not make*
21 *absentee ballots sortable by precinct and include those*
22 *ballots in the hand count described in paragraph (7)*
23 *which is administered with respect to that precinct,*
24 *the State may divide absentee ballots into audit units*
25 *approximately equal in size to the average precinct in*

1 *the State in terms of the number of ballots cast, and*
 2 *shall randomly select and include at least 2 percent*
 3 *of those audit units in the audit. Any audit carried*
 4 *out with respect to such an audit unit shall meet the*
 5 *same standards applicable under paragraph (7) to*
 6 *audits carried out with respect to other precincts and*
 7 *alternative audit units, including the requirement*
 8 *that all paper ballots be counted by hand.*

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

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

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

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

22 *(3) PUBLICATION.—The Commission shall pub-*
 23 *lish each report submitted under paragraph (1) upon*
 24 *receipt.*

1 (d) *DELAY IN CERTIFICATION OF RESULTS BY*
 2 *STATE.*—No State may certify the results of any election
 3 which is subject to an audit under this section prior to com-
 4 pleting the audit, resolving discrepancies discovered in the
 5 audit, and submitting the report required under subsection
 6 (c).

7 **SEC. 4. PAYMENTS FOR CONDUCTING HAND COUNTS OF RE-**
 8 **SULTS OF 2008 GENERAL ELECTIONS.**

9 (a) *PAYMENTS.*—

10 (1) *ELIGIBILITY FOR PAYMENTS.*—If a State,
 11 county, or equivalent location tallies the results of
 12 any regularly scheduled general election for Federal
 13 office in November 2008 by conducting a hand count
 14 of the votes cast on the paper ballots used in the elec-
 15 tion (including paper ballot printouts verifiable by
 16 the voter at the time the vote is cast) in accordance
 17 with the requirements of this section, the Commission
 18 shall make a payment to the State, county, or equiva-
 19 lent location in an amount equal to the documented
 20 reasonable costs incurred by the State, county, or
 21 equivalent location in conducting the hand counts.

22 (2) *CERTIFICATION OF COMPLIANCE AND*
 23 *COSTS.*—

24 (A) *CERTIFICATION REQUIRED.*—In order
 25 to receive a payment under this section, a State,

1 *county, or equivalent location shall submit to the*
2 *Commission (and, in the case of a county or*
3 *equivalent jurisdiction, shall provide a copy to*
4 *the State), in such form as the Commission may*
5 *require, a statement containing—*

6 *(i) a certification that the State, coun-*
7 *ty, or equivalent location conducted the*
8 *hand counts in accordance with all of the*
9 *requirements of this section;*

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

13 *(iii) such other information and assur-*
14 *ances as the Commission may require.*

15 *(B) AMOUNT OF PAYMENT.—The amount of*
16 *a payment made to a State, county, or equiva-*
17 *lent location under this section shall be equal to*
18 *the reasonable costs incurred by the State, coun-*
19 *ty, or equivalent location in conducting the hand*
20 *counts.*

21 *(C) DETERMINATION OF REASONABLENESS*
22 *OF COSTS.—The determinations under this para-*
23 *graph of whether costs incurred by a State, coun-*
24 *ty, or equivalent location are reasonable shall be*
25 *made by the Commission.*

1 (3) *TIMING OF PAYMENTS.*—*The Commission*
 2 *shall make the payment required under this section to*
 3 *a State, county, or equivalent location not later than*
 4 *30 days after receiving the statement submitted by the*
 5 *State, county, or equivalent location under paragraph*
 6 *(2).*

7 (4) *AUTHORIZATION OF APPROPRIATIONS.*—
 8 *There are authorized to be appropriated to the Com-*
 9 *mission such sums as may be necessary for payments*
 10 *under this section. Any amounts appropriated pursu-*
 11 *ant to the authorization under this subsection shall*
 12 *remain available until expended.*

13 (b) *HAND COUNTS DESCRIBED.*—

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

23 (2) *COMPLETENESS.*—*With respect to each juris-*
 24 *diction in which a hand count is conducted, the State,*
 25 *county, or equivalent location shall ensure that a*

1 *voter verified paper ballot or paper ballot printout*
2 *verifiable by the voter at the time the vote is cast is*
3 *available for every vote cast in the jurisdiction.*

4 *(c) PROCESS FOR CONDUCTING HAND COUNTS.—*

5 *(1) IN GENERAL.—In order to meet the require-*
6 *ments of this section, a hand count of the ballots cast*
7 *in an election shall be conducted in accordance with*
8 *the following procedures:*

9 *(A) After the closing of the polls on the date*
10 *of the election, the appropriate election official*
11 *shall secure the ballots at the polling place (or,*
12 *in the case of ballots cast at any other location,*
13 *at the office of the chief election official of the ju-*
14 *risdiction conducting the hand count).*

15 *(B) Beginning at any time after the expira-*
16 *tion of the 8-hour period that begins at the time*
17 *the polls close on the date of the election, the ju-*
18 *risdiction shall conduct an initial hand count of*
19 *the ballots cast in the election, using the ballots*
20 *which are eligible to be counted in the election as*
21 *of the time the polls are closed.*

22 *(C) Any ballot which is eligible to be count-*
23 *ed in the election but which is not included in*
24 *the initial count conducted under subparagraph*
25 *(B), including a provisional ballot cast by an in-*

1 *dividual who is determined to be eligible to vote*
2 *in the election or an absentee ballot received after*
3 *the date of the election but prior to the applica-*
4 *ble deadline under State law for the receipt of*
5 *absentee ballots, shall be subject to a hand count*
6 *in accordance with this section and added to the*
7 *tally conducted under subparagraph (B) not*
8 *later than 48 hours after the ballot is determined*
9 *to be eligible to be counted.*

10 *(D) The hand count shall be conducted by*
11 *a team of not fewer than 2 individuals who shall*
12 *be witnessed by at least one observer sitting at*
13 *the same table with such individuals. Except as*
14 *provided in paragraph (2), all such individuals*
15 *shall be election officials of the jurisdiction in*
16 *which the hand count is conducted. The number*
17 *of such individuals who are members of the polit-*
18 *ical party whose candidates received the greatest*
19 *number of the aggregate votes cast in the regu-*
20 *larly scheduled general elections for Federal of-*
21 *fice held in the State in November 2006 shall be*
22 *equal to the number of such individuals who are*
23 *members of the political party whose candidates*
24 *received the second greatest number of the aggre-*
25 *gate votes cast in the regularly scheduled general*

1 *elections for Federal office held in the State in*
2 *November 2006.*

3 *(E) After the completion of the hand count,*
4 *the ballots may be run through a tabulating ma-*
5 *chine or scanner for comparison with the tally,*
6 *if such a machine or scanner is available. The*
7 *use of the tabulating machine or scanner shall be*
8 *solely to compare with the tally determined by*
9 *the hand count and not to substitute another*
10 *tally of the ballots.*

11 *(2) USE OF OTHER PERSONNEL.—An individual*
12 *who is not an election official of the jurisdiction in*
13 *which a hand count is conducted under this section*
14 *may serve on a team conducting the hand count or*
15 *may serve as an observer of a team conducting the*
16 *hand count if the jurisdiction certifies that the indi-*
17 *vidual has completed such training as the jurisdiction*
18 *deems appropriate to conduct or observe the hand*
19 *count (as the case may be).*

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

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

1 (B) in the case of any other ballots, at the
2 office of the chief election official of the jurisdic-
3 tion conducting the hand count.

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

7 (A) The vote tally for each candidate.

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

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

15 (D) The total number of ballots cast.

16 (E) A record of judgement calls made re-
17 garding voter intent.

18 (5) *PUBLIC OBSERVATION OF HAND COUNTS.*—
19 Each hand count conducted under this section shall be
20 conducted in a manner that allows public observation
21 of the entire process (including the opening of the bal-
22 lot boxes or removal of machine-printed ballots from
23 their containers, the sorting, counting, and notation
24 of results, and the announcement of final determina-

1 *tions) sufficient to confirm but not interfere with the*
 2 *proceedings.*

3 (6) *ESTABLISHMENT AND PUBLICATION OF PRO-*
 4 *CEDURES.—Prior to the date of the regularly sched-*
 5 *uled general election for Federal office held in Novem-*
 6 *ber 2008, a State, county, or equivalent location shall*
 7 *establish and publish procedures for carrying out*
 8 *hand counts under this subsection.*

9 (d) *APPLICATION TO JURISDICTIONS CONDUCTING*
 10 *ELECTIONS WITH DIRECT RECORDING ELECTRONIC VOT-*
 11 *ING SYSTEMS.—*

12 (1) *REQUIRING SYSTEMS TO PRODUCE VOTER*
 13 *VERIFIABLE PAPER RECORD.—If a State, county, or*
 14 *equivalent location uses a direct recording electronic*
 15 *voting system to conduct an election, the State, coun-*
 16 *ty, or equivalent location may not receive a payment*
 17 *under this section for conducting a hand count of the*
 18 *votes cast in the election unless (in addition to meet-*
 19 *ing the other requirements applicable under this sec-*
 20 *tion) the State, county, or equivalent location certifies*
 21 *to the Commission that each such system produces a*
 22 *paper record printout of the marked ballot which is*
 23 *verifiable by the voter at the time the vote is cast.*

24 (2) *TREATMENT OF PAPER RECORD PRINT-*
 25 *OUTS.—In applying this section to a hand count con-*

1 *ducted by a State, county, or equivalent location*
 2 *which provides a certification to the Commission*
 3 *under paragraph (1), the paper record printout re-*
 4 *ferred to in such paragraph shall be treated as the*
 5 *paper ballot used in the election.*

6 *(e) ANNOUNCEMENT AND POSTING OF RESULTS.—*
 7 *Upon the completion of a hand count conducted under this*
 8 *section, the State, county, or equivalent location shall an-*
 9 *nounce the results to the public and post them on a public*
 10 *Internet site.*

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

17 **SEC. 5. STUDY, TESTING, AND DEVELOPMENT OF PROD-**
 18 **UCTS AND PRACTICES TO ENSURE ACCESSI-**
 19 **BILITY OF PAPER BALLOT VERIFICATION AND**
 20 **CASTING FOR CERTAIN INDIVIDUALS.**

21 *(a) STUDY, TESTING, AND DEVELOPMENT.—The Di-*
 22 *rector of the National Institute of Standards and Tech-*
 23 *nology (hereafter in this section referred to as the “Direc-*
 24 *tor”)) shall study, test, and develop products and practices*
 25 *that ensure the accessibility of paper ballot verification and*

1 casting for individuals with disabilities, for voters whose
 2 primary language is not English, and for voters with dif-
 3 ficulties in literacy, including the mechanisms themselves
 4 and the processes through which the mechanisms are used.
 5 In carrying out this subsection, the Director shall specifi-
 6 cally investigate existing and potential methods or devices,
 7 including non-electronic devices, that will assist such indi-
 8 viduals and voters in creating voter-verified paper ballots,
 9 presenting or transmitting the information printed or
 10 marked on such ballots back to such individuals and voters
 11 in an accessible form, and enabling the voters to cast the
 12 ballots.

13 (b) *REPORT.*—Not later than June 30, 2009, the Direc-
 14 tor shall submit a report to Congress on the results of the
 15 studying, testing, and development of products and prac-
 16 tices under subsection (a).

17 (c) *AUTHORIZATION OF APPROPRIATIONS.*—There are
 18 authorized to be appropriated to the Director such sums as
 19 may be necessary to carry out this section, to remain avail-
 20 able until expended.

21 **SEC. 6. DEFINITIONS.**

22 *In this Act—*

23 (1) the term “Commission” means the Election
 24 Assistance Commission; and

1 (2) *the term “State” includes the District of Co-*
2 *lumbia, the Commonwealth of Puerto Rico, Guam,*
3 *American Samoa, and the United States Virgin Is-*
4 *lands.*

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.”.

Union Calendar No. 360

110TH CONGRESS
2^D Session

H. R. 5036

[Report No. 110-582, Part I]

A BILL

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.

APRIL 14, 2008

Committee on Science and Technology discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed