

Thirteen Issues with the Holt Bill (HR 811) As Written

For more information contact: Nancy Tobi, ntobi@democracyfornewhampshire.com, 603.315.4500

- 1) **Impossible timelines for implementation.** The timeline for 2008 implementation is unattainable by the federal government's very own guidelines with respect to the EAC Certification Program, Voluntary Voting System Guidelines (VVSG I), and any voting equipment that would be available, tested, and certified to that program's requirements. Because 39 states require some form of compliance with Federal Guidelines, they must use equipment to meet these EAC "voluntary" guidelines. However, there is no voting equipment on the market that can or will meet several of the guidelines and requirements under the EAC Certification Program by 2008, which are contained within the VVSG I, including the Holt Bill-mandated text conversion device (to convert ballot text to "Accessible Media") or its mandated VVPAT (archival quality paper).
- 2) **Loss of State-Guaranteed Privacy for Military and Overseas Voters.** The Special Rule for Votes Cast by Absent Military and Overseas Voters pre-empts state's rights to disallow fax and emailed ballots. States, such as NH, use state-issued paper ballots for the Military and Overseas voters in order to protect their voting privacy and the integrity of the State election. The Holt Bill overrides this State prerogative, enforcing a system that can not protect the ballot privacy for military voters.
- 3) **Unfunded mandate for new voting equipment.** The Conversion of Printed Content to Accessible Media is an unfunded mandate (estimated at up to \$4 Billion for nationwide implementation) for voting equipment that does not exist and probably will not exist until at the earliest 2012-2016. Jim Dickson, lobbyist for American Association of People with Disabilities, has publicly stated that the AAPD and other disability groups oppose the Holt Bill on these grounds.
- 4) **Impossible mandate for undisclosed software.** The prohibition of undisclosed software does not provide any exemption for COTS (commercial off the shelf) software. No existing voting equipment meets this requirement because they all use COTS, and many, if not all, use Microsoft software. Microsoft will never share its code, and this requirement would make every piece of voting equipment in use today illegal, requiring jurisdictions to run elections using illegal equipment or to replace existing equipment at a high cost, unfunded by HR 811. However, replacing equipment is equally problematic because none currently exists to meet this mandate or the EAC's VVSG I testing and certification standards.
- 5) **Unrealistic and unnecessary requirement for archival quality paper.** Durability requirements for paper ballots require archival quality paper. No equipment currently on the market will work with this requirement and it could take several years to develop. Federal law only requires the paper to last 22 months. Why require it to be archival? Again, this requirement would make every piece of voting equipment in use today illegal, requiring jurisdictions to replace equipment at a high cost, unfunded by HR 811. Again, the caveat -- as described

in item 5 above-- regarding the nonexistence of equipment to meet this mandate applies.

- 6) **Possibly illegal requirement for EAC payments to testing labs.** Procedures for conducting testing and payment of user fees that establishes an escrow account. The EAC has made it clear that they cannot pay the test lab under current law (“Miscellaneous Receipts”) because the payment must come directly from vendor. On its face, the law appears to be illegal. If the law is changed to accommodate EAC payments to test labs, there is the additional risk of expanding EAC powers and authority. EAC is a four-person commission presidentially appointed, and expanded power to the Executive Branch in the oversight of federal elections is anathema to a healthy democracy.
- 7) **Expansion of Executive power over federal elections.** Extension of Authorization of the EAC. The EAC under HAVA should have been sunsetted in 2006, when their mandate to fulfill HAVA was complete. The EAC, through its testing and certification program already exerts de facto regulation over some 39 states, and additionally was granted regulatory authority in overseeing the National Voter Registration Act. Extension of this executive-appointed body raises the risk that Congress will expand the regulatory authority of the EAC, which expands the power of the Executive Branch over federal elections. This will result in a four-person Executive Commission, hand selected by the President, which has the power to effectively bypass Congress and create its own law pertaining to federal elections.
- 8) **Requirement for state audit function that may not exist or be appropriate.** Establishment of Election Audit Boards mandates a whole new state election function that may or may not exist in any given state, and which may or may not be suitable in any given state.
- 9) **Insufficient audit protocols.** Number of Ballots Counted Under Audits uses unreasonable auditing protocols that are insufficient to uncover any discrepancies, fraud or failure. This also creates the State Audit Board, which is non-existent in several states, and is another unfunded mandate.
- 10) **Impossible effective date for audits.** The bill mandates an impossible effective date for implementation among states for whom no such audit function currently exists, and which would need to create, from the ground up, an entirely new state function complete with appropriate staff, overhead, and legal infrastructure.
- 11) **Impossible effective date for implementing the entire bill.** The mandated 2008 effective date is also impossible for all the reasons given above with respect to available voting equipment to match HR 811 requirements.
- 12) **Broad reaching unfunded mandates.** The bill allocates \$300 million for its implementation, but estimates for accessibility devices alone reach \$4 billion. This does not even address the matter of new VVPAT equipment, or new state functions for auditing and certification of voting equipment.
- 13) **Requirement for state certification function that may not exist.** The bill repeatedly calls for an "appropriate election official" to make certification decisions, making an assumption that every state currently can identify that “appropriate” election official. However, many states do not currently have voting equipment certification offices in place. Funding such a state function can run up

to \$1 MIL/year, as is seen in Georgia with its Kennesaw Certification program budget. How quickly can states be expected to find that appropriate official, set up an office and fund it? This is not a one or two year process and asks more of our Secretaries of State, or some other entity that does not yet exist than has been expected to date.