

110TH CONGRESS
1ST SESSION

S. 2295

To amend the Help America Vote Act of 2002 to require a voter-verified permanent paper ballot under title III of such Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 1, 2007

Mr. NELSON of Florida (for himself and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To amend the Help America Vote Act of 2002 to require a voter-verified permanent paper ballot under title III of such Act, 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 “Voter Confidence and
5 Increased Accessibility Act of 2007”.

6 **SEC. 2. PROMOTING ACCURACY, INTEGRITY, AND SECU-**
7 **RITY THROUGH VOTER-VERIFIED PERMA-**
8 **NENT PAPER BALLOT.**

9 (a) **BALLOT VERIFICATION AND AUDIT CAPACITY.—**

1 (1) IN GENERAL.—Section 301(a)(2) of the
2 Help America Vote Act of 2002 (42 U.S.C.
3 15481(a)(2)) is amended to read as follows:

4 “(2) BALLOT VERIFICATION AND AUDIT CAPAC-
5 ITY.—

6 “(A) VOTER-VERIFIED PAPER BALLOTS.—

7 “(i) VERIFICATION.—(I) The voting
8 system shall require the use of or produce
9 an individual, durable, voter-verified, paper
10 ballot of the voter’s vote that shall be cre-
11 ated by or made available for inspection
12 and verification by the voter before the vot-
13 er’s vote is cast and counted. For purposes
14 of this subclause, the term ‘individual, du-
15 rable, voter-verified, paper ballot’ includes
16 (but is not limited to) a paper ballot
17 marked by the voter for the purpose of
18 being counted by hand or read by an opti-
19 cal scanner or other similar device, a paper
20 ballot prepared by the voter to be mailed
21 to an election official (whether from a do-
22 mestic or overseas location), a paper ballot
23 created through the use of a nontabulating
24 ballot marking device or system, or, in the
25 case of an election held before 2012, a

1 paper ballot produced by a direct recording
2 electronic voting machine, so long as in
3 each case the voter is permitted to verify
4 the ballot in a paper form in accordance
5 with this subparagraph.

6 “(II) The voting system shall provide
7 the voter with an opportunity to correct
8 any error made by the system in the voter-
9 verified paper ballot before the permanent
10 voter-verified paper ballot is preserved in
11 accordance with clause (ii).

12 “(III) The voting system shall not
13 preserve the voter-verified paper ballots in
14 any manner that makes it possible, at any
15 time after the ballot has been cast, to asso-
16 ciate a voter with the record of the voter’s
17 vote.

18 “(ii) PRESERVATION.—The individual,
19 durable, voter-verified, paper ballot pro-
20 duced in accordance with clause (i) shall be
21 used as the official ballot for purposes of
22 any recount or audit conducted with re-
23 spect to any election for Federal office in
24 which the voting system is used, and shall
25 be preserved—

1 “(I) in the case of votes cast at
2 the polling place on the date of the
3 election, within the polling place in a
4 secure manner; or

5 “(II) in any other case, in a se-
6 cure manner which is consistent with
7 the manner employed by the jurisdic-
8 tion for preserving paper ballots in
9 general.

10 “(iii) MANUAL AUDIT CAPACITY.—(I)
11 Each paper ballot produced pursuant to
12 clause (i) shall be suitable for a manual
13 audit equivalent to that of a paper ballot
14 voting system, and shall be counted by
15 hand in any recount or audit conducted
16 with respect to any election for Federal of-
17 fice.

18 “(II) In the event of any inconsist-
19 encies or irregularities between any elec-
20 tronic vote tallies and the vote tallies de-
21 termined by counting by hand the indi-
22 vidual, durable, voter-verified, paper ballots
23 produced pursuant to clause (i), and sub-
24 ject to subparagraph (B), the individual,
25 durable, voter-verified, paper ballots shall

1 be the true and correct record of the votes
2 cast.

3 “(B) SPECIAL RULE FOR TREATMENT OF
4 DISPUTES WHEN PAPER BALLOTS HAVE BEEN
5 SHOWN TO BE COMPROMISED.—

6 “(i) IN GENERAL.—In the event
7 that—

8 “(I) there is any inconsistency
9 between any electronic vote tallies and
10 the vote tallies determined by count-
11 ing by hand the individual, durable,
12 voter-verified, paper ballots produced
13 pursuant to subparagraph (A)(i) with
14 respect to any election for Federal of-
15 fice; and

16 “(II) it is demonstrated by clear
17 and convincing evidence (as deter-
18 mined in accordance with the applica-
19 ble standards in the jurisdiction in-
20 volved) in any recount, audit, or con-
21 test of the result of the election that
22 the paper ballots have been com-
23 promised (by damage or mischief or
24 otherwise) and that a sufficient num-
25 ber of the ballots have been so com-

1 promised that the result of the elec-
2 tion could be changed,
3 the determination of the appropriate rem-
4 edy with respect to the election shall be
5 made in accordance with applicable State
6 law, except that the electronic tally shall
7 not be used as the exclusive basis for de-
8 termining the official certified vote tally.

9 “(ii) RULE FOR CONSIDERATION OF
10 BALLOTS ASSOCIATED WITH EACH VOTING
11 MACHINE.—For purposes of clause (i),
12 only the paper ballots deemed com-
13 promised, if any, shall be considered in the
14 calculation of whether or not the result of
15 the election could be changed due to the
16 compromised paper ballots.”.

17 (2) CONFORMING AMENDMENT CLARIFYING AP-
18 PLICABILITY OF ALTERNATIVE LANGUAGE ACCESSI-
19 BILITY.—Section 301(a)(4) of such Act (42 U.S.C.
20 15481(a)(4)) is amended by inserting “(including
21 the paper ballots required to be produced under
22 paragraph (2) and the notices required under para-
23 graphs (7) and (13)(C)” after “voting system”.

1 (3) OTHER CONFORMING AMENDMENTS.—Sec-
2 tion 301(a)(1) of such Act (42 U.S.C. 15481(a)(1))
3 is amended—

4 (A) in subparagraph (A)(i), by striking
5 “counted” and inserting “counted, in accord-
6 ance with paragraphs (2) and (3)”;

7 (B) in subparagraph (A)(ii), by striking
8 “counted” and inserting “counted, in accord-
9 ance with paragraphs (2) and (3)”;

10 (C) in subparagraph (A)(iii), by striking
11 “counted” each place it appears and inserting
12 “counted, in accordance with paragraphs (2)
13 and (3)”;

14 (D) in subparagraph (B)(ii), by striking
15 “counted” and inserting “counted, in accord-
16 ance with paragraphs (2) and (3)”.

17 (b) ACCESSIBILITY AND BALLOT VERIFICATION FOR
18 INDIVIDUALS WITH DISABILITIES.—

19 (1) IN GENERAL.—Section 301(a)(3)(B) of
20 such Act (42 U.S.C. 15481(a)(3)(B)) is amended to
21 read as follows:

22 “(B)(i) satisfy the requirement of subpara-
23 graph (A) through the use of at least one voting
24 system equipped for individuals with disabil-
25 ities, including nonvisual and enhanced visual

1 accessibility for the blind and visually impaired,
2 at each polling place; and

3 “(ii) meet the requirements of subpara-
4 graph (A) and paragraph (2)(A) by using a sys-
5 tem that—

6 “(I) allows the voter to privately and
7 independently verify the permanent paper
8 ballot through the presentation, in acces-
9 sible form, of the printed or marked vote
10 selections from the same printed or
11 marked information that would be used for
12 any vote counting or auditing;

13 “(II) ensures that the entire process
14 of ballot verification and vote casting is
15 equipped for individuals with disabilities,
16 including nonvisual and enhanced visual
17 accessibility for the blind and visually im-
18 paired; and

19 “(III) does not preclude the supple-
20 mentary use of Braille or tactile ballots;
21 and”.

22 (2) SPECIFIC REQUIREMENT OF STUDY, TEST-
23 ING, AND DEVELOPMENT OF ACCESSIBLE BALLOT
24 VERIFICATION MECHANISMS.—

1 (A) STUDY AND REPORTING.—Subtitle C
2 of title II of such Act (42 U.S.C. 15381 et seq.)
3 is amended—

4 (i) by redesignating section 247 as
5 section 248; and

6 (ii) by inserting after section 246 the
7 following new section:

8 **“SEC. 247. STUDY AND REPORT ON ACCESSIBLE BALLOT**
9 **VERIFICATION MECHANISMS.**

10 “(a) STUDY AND REPORT.—The Director of the Na-
11 tional Institute of Standards and Technology shall study,
12 test, and develop best practices to enhance the accessibility
13 of ballot verification mechanisms for individuals with dis-
14 abilities, for voters whose primary language is not English,
15 and for voters with difficulties in literacy, including best
16 practices for the mechanisms themselves and the processes
17 through which the mechanisms are used. In carrying out
18 this section, the Director shall specifically investigate ex-
19 isting and potential methods or devices, including non-
20 electronic devices, that will assist such individuals and vot-
21 ers in creating voter-verified paper ballots and presenting
22 or transmitting the information printed or marked on such
23 ballots back to such individuals and voters.

24 “(b) COORDINATION WITH GRANTS FOR TECH-
25 NOLOGY IMPROVEMENTS.—The Director shall coordinate

1 the activities carried out under subsection (a) with the re-
 2 search conducted under the grant program carried out by
 3 the Commission under section 271, to the extent that the
 4 Director and Commission determine necessary to provide
 5 for the advancement of accessible voting technology.

6 “(c) DEADLINE.—The Director shall complete the re-
 7 quirements of subsection (a) not later than December 31,
 8 2008.

9 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
 10 are authorized to be appropriated to carry out subsection
 11 (a) \$3,000,000, to remain available until expended.”.

12 (B) CLERICAL AMENDMENT.—The table of
 13 contents of such Act is amended—

14 (i) by redesignating the item relating
 15 to section 247 as relating to section 248;
 16 and

17 (ii) by inserting after the item relating
 18 to section 246 the following new item:

“Sec. 247. Study and report on accessible ballot verification mechanisms.”.

19 (3) CLARIFICATION OF ACCESSIBILITY STAND-
 20 ARDS UNDER VOLUNTARY VOTING SYSTEM GUID-
 21 ANCE.—In adopting any voluntary guidance under
 22 subtitle B of title III of the Help America Vote Act
 23 with respect to the accessibility of the paper ballot
 24 verification requirements for individuals with disabili-
 25 ties, the Election Assistance Commission shall in-

1 include and apply the same accessibility standards ap-
2 plicable under the voluntary guidance adopted for
3 accessible voting systems under such subtitle.

4 (c) ADDITIONAL VOTING SYSTEM REQUIREMENTS.—

5 (1) REQUIREMENTS DESCRIBED.—Section
6 301(a) of such Act (42 U.S.C. 15481(a)) is amend-
7 ed by adding at the end the following new para-
8 graphs:

9 “(7) INSTRUCTION REMINDING VOTERS OF IM-
10 PORTANCE OF VERIFYING PAPER BALLOT.—

11 “(A) IN GENERAL.—The appropriate elec-
12 tion official at each polling place shall cause to
13 be placed in a prominent location in the polling
14 place which is clearly visible from the voting
15 booths a notice, in large font print accessible to
16 the visually impaired, advising voters that the
17 paper ballots representing their votes shall serve
18 as the vote of record in all audits and recounts
19 in elections for Federal office, and that they
20 should not leave the voting booth until con-
21 firming that such paper ballots accurately
22 record their vote.

23 “(B) SYSTEMS FOR INDIVIDUALS WITH
24 DISABILITIES.—All voting systems equipped for
25 individuals with disabilities shall present or

1 transmit in accessible form the statement re-
2 ferred to in subparagraph (A), as well as an ex-
3 planation of the verification process described
4 in paragraph (3)(B)(ii).

5 “(8) PROHIBITING USE OF UNCERTIFIED ELEC-
6 TION-DEDICATED VOTING SYSTEM TECHNOLOGIES;
7 DISCLOSURE REQUIREMENTS.—

8 “(A) IN GENERAL.—A voting system used
9 in an election for Federal office in a State may
10 not at any time during the election contain or
11 use any election-dedicated voting system tech-
12 nology—

13 “(i) which has not been certified by
14 the State for use in the election; and

15 “(ii) which has not been deposited
16 with an accredited laboratory described in
17 section 231 to be held in escrow and dis-
18 closed in accordance with this section.

19 “(B) REQUIREMENT FOR AND RESTRIC-
20 TIONS ON DISCLOSURE.—An accredited labora-
21 tory under section 231 with whom an election-
22 dedicated voting system technology has been de-
23 posited shall—

24 “(i) hold the technology in escrow;
25 and

1 “(ii) disclose technology and informa-
2 tion regarding the technology to another
3 person if—

4 “(I) the person is a qualified per-
5 son described in subparagraph (C)
6 who has entered into a nondisclosure
7 agreement with respect to the tech-
8 nology which meets the requirements
9 of subparagraph (D); or

10 “(II) the laboratory is required to
11 disclose the technology to the person
12 under State law, in accordance with
13 the terms and conditions applicable
14 under such law.

15 “(C) QUALIFIED PERSONS DESCRIBED.—

16 With respect to the disclosure of election-dedi-
17 cated voting system technology by a laboratory
18 under subparagraph (B)(ii)(I), a ‘qualified per-
19 son’ is any of the following:

20 “(i) A governmental entity with re-
21 sponsibility for the administration of vot-
22 ing and election-related matters for pur-
23 poses of reviewing, analyzing, or reporting
24 on the technology.

1 “(ii) A party to pre- or post-election
2 litigation challenging the result of an elec-
3 tion or the administration or use of the
4 technology used in an election, including
5 but not limited to election contests or chal-
6 lenges to the certification of the tech-
7 nology, or an expert for a party to such
8 litigation, for purposes of reviewing or ana-
9 lyzing the technology to support or oppose
10 the litigation, and all parties to the litiga-
11 tion shall have access to the technology for
12 such purposes.

13 “(iii) A person not described in clause
14 (i) or (ii) who reviews, analyzes, or reports
15 on the technology solely for an academic,
16 scientific, technological, or other investiga-
17 tion or inquiry concerning the accuracy or
18 integrity of the technology.

19 “(D) REQUIREMENTS FOR NONDISCLO-
20 SURE AGREEMENTS.—A nondisclosure agree-
21 ment entered into with respect to an election-
22 dedicated voting system technology meets the
23 requirements of this subparagraph if the agree-
24 ment—

1 “(i) is limited in scope to coverage of
2 the technology disclosed under subpara-
3 graph (B) and any trade secrets and intel-
4 lectual property rights related thereto;

5 “(ii) does not prohibit a signatory
6 from entering into other nondisclosure
7 agreements to review other technologies
8 under this paragraph;

9 “(iii) exempts from coverage any in-
10 formation the signatory lawfully obtained
11 from another source or any information in
12 the public domain;

13 “(iv) remains in effect for not longer
14 than the life of any trade secret or other
15 intellectual property right related thereto;

16 “(v) prohibits the use of injunctions
17 barring a signatory from carrying out any
18 activity authorized under subparagraph
19 (C), including injunctions limited to the
20 period prior to a trial involving the tech-
21 nology;

22 “(vi) is silent as to damages awarded
23 for breach of the agreement, other than a
24 reference to damages available under appli-
25 cable law;

1 “(vii) allows disclosure of evidence of
2 crime, including in response to a subpoena
3 or warrant;

4 “(viii) allows the signatory to perform
5 analyses on the technology (including by
6 executing the technology), disclose reports
7 and analyses that describe operational
8 issues pertaining to the technology (includ-
9 ing vulnerabilities to tampering, errors,
10 risks associated with use, failures as a re-
11 sult of use, and other problems), and de-
12 scribe or explain why or how a voting sys-
13 tem failed or otherwise did not perform as
14 intended; and

15 “(ix) provides that the agreement
16 shall be governed by the trade secret laws
17 of the applicable State.

18 “(E) ELECTION-DEDICATED VOTING SYS-
19 TEM TECHNOLOGY DEFINED.—For purposes of
20 this paragraph:

21 “(i) IN GENERAL.—The term ‘elec-
22 tion-dedicated voting system technology’
23 means the following:

24 “(I) The source code used for the
25 trusted build and its file signatures.

1 “(II) A complete disk image of
2 the pre-build, build environment, and
3 any file signatures to validate that it
4 is unmodified.

5 “(III) A complete disk image of
6 the post-build, build environment, and
7 any file signatures to validate that it
8 is unmodified.

9 “(IV) All executable code pro-
10 duced by the trusted build and any
11 file signatures to validate that it is
12 unmodified.

13 “(V) Installation devices and
14 software file signatures.

15 “(ii) EXCLUSION.—Such term does
16 not include ‘commercial-off-the-shelf’ soft-
17 ware and hardware defined under under
18 the 2005 voluntary voting system guide-
19 lines adopted by the Commission under
20 section 222.

21 “(9) PROHIBITION OF USE OF WIRELESS COM-
22 MUNICATIONS DEVICES IN VOTING SYSTEMS.—No
23 voting device upon which ballots are programmed or
24 votes are cast or tabulated shall contain, use, or be
25 accessible by any wireless, power-line, or concealed

1 communication device, except that enclosed infrared
2 communications devices which are certified for use
3 in such device by the State and which cannot be
4 used for any remote or wide area communications or
5 used without the knowledge of poll workers shall be
6 permitted.

7 “(10) PROHIBITING CONNECTION OF SYSTEM
8 OR TRANSMISSION OF SYSTEM INFORMATION OVER
9 THE INTERNET.—

10 “(A) IN GENERAL.—No voting device upon
11 which ballots are programmed or votes are cast
12 or tabulated shall be connected to the Internet
13 at any time.

14 “(B) RULE OF CONSTRUCTION.—Nothing
15 contained in this paragraph shall be deemed to
16 prohibit the Commission from conducting the
17 studies under section 242 or to conduct other
18 similar studies under any other provision of law
19 in a manner consistent with this paragraph.

20 “(11) SECURITY STANDARDS FOR VOTING SYS-
21 TEMS USED IN FEDERAL ELECTIONS.—

22 “(A) IN GENERAL.—No voting system may
23 be used in an election for Federal office unless
24 the manufacturer of such system and the elec-
25 tion officials using such system meet the appli-

1 cable requirements described in subparagraph
2 (B).

3 “(B) REQUIREMENTS DESCRIBED.—The
4 requirements described in this subparagraph
5 are as follows:

6 “(i) The manufacturer and the elec-
7 tion officials shall document the secure
8 chain of custody for the handling of all
9 software, hardware, vote storage media,
10 ballots, and voter-verified ballots used in
11 connection with voting systems, and shall
12 make the information available upon re-
13 quest to the Commission.

14 “(ii) The manufacturer shall disclose
15 to an accredited laboratory under section
16 231 and to the appropriate election official
17 any information required to be disclosed
18 under paragraph (8).

19 “(iii) After the appropriate election
20 official has certified the election-dedicated
21 and other voting system software for use in
22 an election, the manufacturer may not—

23 “(I) alter such software; or

1 “(II) insert or use in the voting
2 system any software not certified by
3 the State for use in the election.

4 “(iv) At the request of the Commis-
5 sion—

6 “(I) the appropriate election offi-
7 cial shall submit information to the
8 Commission regarding the State’s
9 compliance with this subparagraph;
10 and

11 “(II) the manufacturer shall sub-
12 mit information to the Commission re-
13 garding the manufacturer’s compli-
14 ance with this subparagraph.

15 “(C) DEVELOPMENT AND PUBLICATION OF
16 BEST PRACTICES ON DOCUMENTATION OF SE-
17 CURE CHAIN OF CUSTODY.—Not later than Au-
18 gust 1, 2008, the Commission shall develop and
19 make publicly available best practices regarding
20 the requirement of subparagraph (B)(i).

21 “(D) DISCLOSURE OF SECURE CHAIN OF
22 CUSTODY.—The Commission shall make infor-
23 mation provided to the Commission under sub-
24 paragraph (B)(i) available to any person upon
25 request.

1 “(12) DURABILITY AND READABILITY REQUIRE-
2 MENTS FOR BALLOTS.—

3 “(A) DURABILITY REQUIREMENTS FOR
4 PAPER BALLOTS.—

5 “(i) IN GENERAL.—All voter-verified
6 paper ballots required to be used under
7 this Act (including the paper ballots pro-
8 vided to voters under paragraph (13)) shall
9 be marked, printed, or recorded on durable
10 paper.

11 “(ii) DEFINITION.—For purposes of
12 this Act, paper is ‘durable’ if it is capable
13 of withstanding multiple counts and re-
14 counts by hand without compromising the
15 fundamental integrity of the ballots, and
16 capable of retaining the information
17 marked, printed, or recorded on them for
18 the full duration of a retention and preser-
19 vation period of 22 months.

20 “(B) READABILITY REQUIREMENTS FOR
21 MACHINE-MARKED OR PRINTED PAPER BAL-
22 LOTS.—All voter-verified paper ballots com-
23 pleted by the voter through the use of a mark-
24 ing or printing device shall be clearly readable
25 by the voter without assistance (other than eye-

1 glasses or other personal vision enhancing de-
2 vices) and by a scanner or other device
3 equipped for individuals with disabilities.

4 “(13) MANDATORY AVAILABILITY OF PAPER
5 BALLOTS AT POLLING PLACES.—

6 “(A) REQUIRING BALLOTS TO BE OF-
7 FERED AND PROVIDED.—

8 “(i) IN GENERAL.—The appropriate
9 election official at each polling place in any
10 election for Federal office shall offer each
11 individual who is eligible to cast a vote in
12 the election at the polling place the oppor-
13 tunity to cast the vote using a blank pre-
14 printed paper ballot which the individual
15 may mark by hand and which is not pro-
16 duced by the direct recording electronic
17 voting machine. The official shall provide
18 the individual with the ballot and the sup-
19 plies necessary to mark the ballot.

20 “(ii) SPECIAL RULE FOR LOCATIONS
21 USING DRE VOTING SYSTEMS.—In the case
22 of a polling place that uses a direct record-
23 ing electronic voting device, if the indi-
24 vidual accepts the offer to cast the vote
25 using a paper ballot, the official shall en-

1 sure (to the greatest extent practicable)
2 that the waiting period for the individual
3 to cast a vote is not greater than the wait-
4 ing period for an individual who does not
5 agree to cast the vote using such a paper
6 ballot under this paragraph.

7 “(B) TREATMENT OF BALLOT.—Any paper
8 ballot which is cast by an individual under this
9 paragraph shall be counted and otherwise treat-
10 ed as a regular ballot for all purposes (includ-
11 ing by incorporating it into the final unofficial
12 vote count (as defined by the State) for the pre-
13 inct) and not as a provisional ballot, unless the
14 individual casting the ballot would have other-
15 wise been required to cast a provisional ballot.

16 “(C) POSTING OF NOTICE.—The appro-
17 priate election official shall ensure there is
18 prominently displayed at each polling place a
19 notice that describes the obligation of the offi-
20 cial to offer individuals the opportunity to cast
21 votes using a pre-printed blank paper ballot.

22 “(D) TRAINING OF ELECTION OFFI-
23 CIALS.—The chief State election official shall
24 ensure that election officials at polling places in
25 the State are aware of the requirements of this

1 paragraph, including the requirement to display
2 a notice under subparagraph (C), and are
3 aware that it is a violation of the requirements
4 of this title for an election official to fail to
5 offer an individual the opportunity to cast a
6 vote using a blank pre-printed paper ballot.”.

7 (2) REQUIRING LABORATORIES TO MEET
8 STANDARDS PROHIBITING CONFLICTS OF INTEREST
9 AS CONDITION OF ACCREDITATION FOR TESTING OF
10 VOTING SYSTEM HARDWARE AND SOFTWARE.—

11 (A) IN GENERAL.—Section 231(b) of such
12 Act (42 U.S.C. 15371(b)) is amended by add-
13 ing at the end the following new paragraphs:

14 “(3) PROHIBITING CONFLICTS OF INTEREST;
15 ENSURING AVAILABILITY OF RESULTS.—

16 “(A) IN GENERAL.—A laboratory may not
17 be accredited by the Commission for purposes
18 of this section unless—

19 “(i) the laboratory certifies that the
20 only compensation it receives for the test-
21 ing carried out in connection with the cer-
22 tification, decertification, and recertifi-
23 cation of the manufacturer’s voting system
24 hardware and software is the payment

1 made from the Testing Escrow Account
2 under paragraph (4);

3 “(ii) the laboratory meets such stand-
4 ards as the Commission shall establish
5 (after notice and opportunity for public
6 comment) to prevent the existence or ap-
7 pearance of any conflict of interest in the
8 testing carried out by the laboratory under
9 this section, including standards to ensure
10 that the laboratory does not have a finan-
11 cial interest in the manufacture, sale, and
12 distribution of voting system hardware and
13 software, and is sufficiently independent
14 from other persons with such an interest;

15 “(iii) the laboratory certifies that it
16 will permit an expert designated by the
17 Commission to observe any testing the lab-
18 oratory carries out under this section; and

19 “(iv) the laboratory, upon completion
20 of any testing carried out under this sec-
21 tion, discloses the test protocols, results,
22 and all communication between the labora-
23 tory and the manufacturer to the Commis-
24 sion.

1 “(B) AVAILABILITY OF RESULTS.—Upon
2 receipt of information under subparagraph (A),
3 the Commission shall make the information
4 available promptly to election officials and the
5 public.

6 “(4) PROCEDURES FOR CONDUCTING TESTING;
7 PAYMENT OF USER FEES FOR COMPENSATION OF
8 ACCREDITED LABORATORIES.—

9 “(A) ESTABLISHMENT OF ESCROW AC-
10 COUNT.—The Commission shall establish an es-
11 crow account (to be known as the ‘Testing Es-
12 crow Account’) for making payments to accred-
13 ited laboratories for the costs of the testing car-
14 ried out in connection with the certification, de-
15 certification, and recertification of voting sys-
16 tem hardware and software.

17 “(B) SCHEDULE OF FEES.—In consulta-
18 tion with the accredited laboratories, the Com-
19 mission shall establish and regularly update a
20 schedule of fees for the testing carried out in
21 connection with the certification, decertification,
22 and recertification of voting system hardware
23 and software, based on the reasonable costs ex-
24 pected to be incurred by the accredited labora-

1 tories in carrying out the testing for various
2 types of hardware and software.

3 “(C) REQUESTS AND PAYMENTS BY MANU-
4 FACTURERS.—A manufacturer of voting system
5 hardware and software may not have the hard-
6 ware or software tested by an accredited labora-
7 tory under this section unless—

8 “(i) the manufacturer submits a de-
9 tailed request for the testing to the Com-
10 mission; and

11 “(ii) the manufacturer pays to the
12 Commission, for deposit into the Testing
13 Escrow Account established under sub-
14 paragraph (A), the applicable fee under the
15 schedule established and in effect under
16 subparagraph (B).

17 “(D) SELECTION OF LABORATORY.—Upon
18 receiving a request for testing and the payment
19 from a manufacturer required under subpara-
20 graph (C), the Commission shall select at ran-
21 dom (to the greatest extent practicable), from
22 all laboratories which are accredited under this
23 section to carry out the specific testing re-
24 quested by the manufacturer, an accredited lab-
25 oratory to carry out the testing.

1 “(E) PAYMENTS TO LABORATORIES.—
2 Upon receiving a certification from a laboratory
3 selected to carry out testing pursuant to sub-
4 paragraph (D) that the testing is completed,
5 along with a copy of the results of the test as
6 required under paragraph (3)(A)(iv), the Com-
7 mission shall make a payment to the laboratory
8 from the Testing Escrow Account established
9 under subparagraph (A) in an amount equal to
10 the applicable fee paid by the manufacturer
11 under subparagraph (C)(ii).

12 “(5) DISSEMINATION OF ADDITIONAL INFORMA-
13 TION ON ACCREDITED LABORATORIES.—

14 “(A) INFORMATION ON TESTING.—Upon
15 completion of the testing of a voting system
16 under this section, the Commission shall
17 promptly disseminate to the public the identi-
18 fication of the laboratory which carried out the
19 testing.

20 “(B) INFORMATION ON STATUS OF LAB-
21 ORATORIES.—The Commission shall promptly
22 notify Congress, the chief State election official
23 of each State, and the public whenever—

1 “(i) the Commission revokes, termi-
2 nates, or suspends the accreditation of a
3 laboratory under this section;

4 “(ii) the Commission restores the ac-
5 creditation of a laboratory under this sec-
6 tion which has been revoked, terminated,
7 or suspended; or

8 “(iii) the Commission has credible evi-
9 dence of significant security failure at an
10 accredited laboratory.”.

11 (B) CONFORMING AMENDMENTS.—Section
12 231 of such Act (42 U.S.C. 15371) is further
13 amended—

14 (i) in subsection (a)(1), by striking
15 “testing, certification,” and all that follows
16 and inserting the following: “testing of vot-
17 ing system hardware and software by ac-
18 credited laboratories in connection with the
19 certification, decertification, and recertifi-
20 cation of the hardware and software for
21 purposes of this Act.”;

22 (ii) in subsection (a)(2), by striking
23 “testing, certification,” and all that follows
24 and inserting the following: “testing of its
25 voting system hardware and software by

1 the laboratories accredited by the Commis-
2 sion under this section in connection with
3 certifying, decertifying, and recertifying
4 the hardware and software.”;

5 (iii) in subsection (b)(1), by striking
6 “testing, certification, decertification, and
7 recertification” and inserting “testing”;
8 and

9 (iv) in subsection (d), by striking
10 “testing, certification, decertification, and
11 recertification” each place it appears and
12 inserting “testing”.

13 (C) DEADLINE FOR ESTABLISHMENT OF
14 STANDARDS, ESCROW ACCOUNT, AND SCHED-
15 ULE OF FEES.—The Election Assistance Com-
16 mission shall establish the standards described
17 in section 231(b)(3) of the Help America Vote
18 Act of 2002 and the Testing Escrow Account
19 and schedule of fees described in section
20 231(b)(4) of such Act (as added by subpara-
21 graph (A)) not later than January 1, 2008.

22 (D) AUTHORIZATION OF APPROPRIA-
23 TIONS.—There are authorized to be appro-
24 priated to the Election Assistance Commission
25 such sums as may be necessary to carry out the

1 Commission's duties under paragraphs (3) and
2 (4) of section 231 of the Help America Vote
3 Act of 2002 (as added by subparagraph (A)).

4 (3) SPECIAL CERTIFICATION OF BALLOT DURA-
5 BILITY AND READABILITY REQUIREMENTS FOR
6 STATES NOT CURRENTLY USING DURABLE PAPER
7 BALLOTS.—

8 (A) IN GENERAL.—If any of the voting
9 systems used in a State for the regularly sched-
10 uled 2006 general elections for Federal office
11 did not require the use of or produce durable
12 paper ballots, the State shall certify to the
13 Election Assistance Commission not later than
14 90 days after the date of the enactment of this
15 Act that the State will be in compliance with
16 the requirements of sections 301(a)(2) and
17 301(a)(12) of the Help America Vote of 2002,
18 as added or amended by this subsection, in ac-
19 cordance with the deadlines established under
20 this Act, and shall include in the certification
21 the methods by which the State will meet the
22 requirements.

23 (B) CERTIFICATIONS BY STATES THAT RE-
24 QUIRE CHANGES TO STATE LAW.—In the case
25 of a State that requires State legislation to

1 carry out an activity covered by any certifi-
 2 cation submitted under this paragraph, the
 3 State shall be permitted to make the certifi-
 4 cation notwithstanding that the legislation has
 5 not been enacted at the time the certification is
 6 submitted and such State shall submit an addi-
 7 tional certification once such legislation is en-
 8 acted.

9 (4) GRANTS FOR RESEARCH ON DEVELOPMENT
 10 OF ELECTION-DEDICATED VOTING SYSTEM SOFT-
 11 WARE.—

12 (A) IN GENERAL.—Subtitle D of title II of
 13 the Help America Vote Act of 2002 (42 U.S.C.
 14 15401 et seq.) is amended by adding at the end
 15 the following new part:

16 **“PART 7—GRANTS FOR RESEARCH ON DEVELOP-**
 17 **MENT OF ELECTION-DEDICATED VOTING**
 18 **SYSTEM SOFTWARE**

19 **“SEC. 297. GRANTS FOR RESEARCH ON DEVELOPMENT OF**
 20 **ELECTION-DEDICATED VOTING SYSTEM**
 21 **SOFTWARE.**

22 “(a) IN GENERAL.—The Director of the National
 23 Science Foundation (hereafter in this part referred to as
 24 the ‘Director’) shall make grants to not fewer than 3 eligi-

1 ble entities to conduct research on the development of elec-
2 tion-dedicated voting system software.

3 “(b) ELIGIBILITY.—An entity is eligible to receive a
4 grant under this part if it submits to the Director (at such
5 time and in such form as the Director may require) an
6 application containing—

7 “(1) certifications regarding the benefits of op-
8 erating voting systems on election-dedicated software
9 which is easily understandable and which is written
10 exclusively for the purpose of conducting elections;

11 “(2) certifications that the entity will use the
12 funds provided under the grant to carry out research
13 on how to develop voting systems that run on elec-
14 tion-dedicated software and that will meet the appli-
15 cable requirements for voting systems under title III;
16 and

17 “(3) such other information and certifications
18 as the Director may require.

19 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated for grants under this
21 section \$1,500,000 for each of fiscal years 2008 and 2009,
22 to remain available until expended.”.

23 (B) CLERICAL AMENDMENT.—The table of
24 contents of such Act is amended by adding at

1 the end of the items relating to subtitle D of
2 title II the following:

“PART 7—GRANTS FOR RESEARCH ON DEVELOPMENT OF ELECTION-
DEDICATED VOTING SYSTEM SOFTWARE

“Sec. 297. Grants for research on development of election-dedicated voting system software.”.

3 (d) AVAILABILITY OF ADDITIONAL FUNDING TO EN-
4 ABLE STATES TO MEET COSTS OF REVISED REQUIRE-
5 MENTS.—

6 (1) EXTENSION OF REQUIREMENTS PAYMENTS
7 FOR MEETING REVISED REQUIREMENTS.—Section
8 257(a) of the Help America Vote Act of 2002 (42
9 U.S.C. 15407(a)) is amended by adding at the end
10 the following new paragraph:

11 “(4) For fiscal year 2008, \$1,000,000,000, ex-
12 cept that any funds provided under the authoriza-
13 tion made by this paragraph shall be used by a
14 State only to meet the requirements of title III
15 which are first imposed on the State pursuant to the
16 amendments made by section 2 of the Voter Con-
17 fidence and Increased Accessibility Act of 2007, or
18 to otherwise modify or replace its voting systems in
19 response to such amendments.”.

20 (2) USE OF REVISED FORMULA FOR ALLOCA-
21 TION OF FUNDS.—Section 252(b) of such Act (42
22 U.S.C. 15402(b)) is amended to read as follows:

23 “(b) STATE ALLOCATION PERCENTAGE DEFINED.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), the ‘State allocation percentage’ for a
3 State is the amount (expressed as a percentage)
4 equal to the quotient of—

5 “(A) the voting age population of the State
6 (as reported in the most recent decennial cen-
7 sus); and

8 “(B) the total voting age population of all
9 States (as reported in the most recent decennial
10 census).

11 “(2) SPECIAL RULE FOR PAYMENTS FOR FIS-
12 CAL YEAR 2008.—

13 “(A) IN GENERAL.—In the case of the re-
14 quirements payment made to a State for fiscal
15 year 2008, the ‘State allocation percentage’ for
16 a State is the amount (expressed as a percent-
17 age) equal to the quotient of—

18 “(i) the sum of the number of non-
19 compliant precincts in the State and 50
20 percent of the number of partially non-
21 compliant precincts in the State; and

22 “(ii) the sum of the number of non-
23 compliant precincts in all States and 50
24 percent of the number of partially non-
25 compliant precincts in all States.

1 “(B) NONCOMPLIANT PRECINCT DE-
2 FINED.—In this paragraph, a ‘noncompliant
3 precinct’ means any precinct (or equivalent lo-
4 cation) within a State for which the voting sys-
5 tem used to administer the regularly scheduled
6 general election for Federal office held in No-
7 vember 2006 did not meet either of the require-
8 ments described in subparagraph (D).

9 “(C) PARTIALLY NONCOMPLIANT PRE-
10 CINCT DEFINED.—In this paragraph, a ‘par-
11 tially noncompliant precinct’ means any pre-
12 cinct (or equivalent location) within a State for
13 which the voting system used to administer the
14 regularly scheduled general election for Federal
15 office held in November 2006 met only one of
16 the requirements described in subparagraph
17 (D).

18 “(D) REQUIREMENTS DESCRIBED.—The
19 requirements described in this subparagraph
20 with respect to a voting system are as follows:

21 “(i) The primary voting system re-
22 quired the use of or produced durable
23 paper ballots (as described in section
24 301(a)(12)(A)) for every vote cast.

1 “(ii) The voting system provided that
2 the entire process of paper ballot
3 verification was equipped for individuals
4 with disabilities.”.

5 (3) REVISED CONDITIONS FOR RECEIPT OF
6 FUNDS.—Section 253 of such Act (42 U.S.C.
7 15403) is amended—

8 (A) in subsection (a), by striking “A State
9 is eligible” and inserting “Except as provided in
10 subsection (f), a State is eligible”; and

11 (B) by adding at the end the following new
12 subsection:

13 “(f) SPECIAL RULE FOR FISCAL YEAR 2008.—

14 “(1) IN GENERAL.—Notwithstanding any other
15 provision of this part, a State is eligible to receive
16 a requirements payment for fiscal year 2008 if, not
17 later than 90 days after the date of the enactment
18 of the Voter Confidence and Increased Accessibility
19 Act of 2007, the chief executive officer of the State,
20 or designee, in consultation and coordination with
21 the chief State election official—

22 “(A) certifies to the Commission the num-
23 ber of noncompliant and partially noncompliant
24 precincts in the State (as defined in section
25 252(b)(2)); and

1 “(B) files a statement with the Commis-
2 sion describing the State’s need for the pay-
3 ment and how the State will use the payment
4 to meet the requirements of title III (in accord-
5 ance with the limitations applicable to the use
6 of the payment under section 257(a)(4)).

7 “(2) CERTIFICATIONS BY STATES THAT RE-
8 QUIRE CHANGES TO STATE LAW.—In the case of a
9 State that requires State legislation to carry out any
10 activity covered by any certification submitted under
11 this subsection, the State shall be permitted to make
12 the certification notwithstanding that the legislation
13 has not been enacted at the time the certification is
14 submitted and such State shall submit an additional
15 certification once such legislation is enacted.”.

16 (4) PERMITTING USE OF FUNDS FOR REIM-
17 BURSEMENT FOR COSTS PREVIOUSLY INCURRED.—
18 Section 251(c)(1) of such Act (42 U.S.C.
19 15401(c)(1)) is amended by striking the period at
20 the end and inserting the following: “, or as a reim-
21 bursement for any costs incurred after November
22 2004 in meeting the requirements of title III which
23 are imposed pursuant to the amendments made by
24 section 2 of the Voter Confidence and Increased Ac-
25 cessibility Act of 2007 or in otherwise upgrading or

1 replacing voting systems in a manner consistent with
2 such amendments (so long as the voting systems
3 meet any of the requirements that apply with re-
4 spect to elections for Federal office held in 2012 and
5 each succeeding year).”.

6 (5) RULE OF CONSTRUCTION REGARDING
7 STATES RECEIVING OTHER FUNDS FOR REPLACING
8 PUNCH CARD, LEVER, OR OTHER VOTING MA-
9 CHINES.—Nothing in the amendments made by this
10 subsection or in any other provision of the Help
11 America Vote Act of 2002 may be construed to pro-
12 hibit a State which received or was authorized to re-
13 ceive a payment under title I or II of such Act for
14 replacing punch card, lever, or other voting ma-
15 chines from receiving or using any funds which are
16 made available under the amendments made by this
17 subsection.

18 (6) RULE OF CONSTRUCTION REGARDING USE
19 OF FUNDS RECEIVED IN PRIOR YEARS.—

20 (A) IN GENERAL.—Nothing contained in
21 this Act or the Help America Vote Act of 2002
22 may be construed to prohibit a State from
23 using funds received under title I or II of the
24 Help America Vote Act of 2002—

1 (i) to purchase or acquire by other
2 means a voting system that meets the re-
3 quirements of paragraphs (2) and (3) of
4 section 301 of the Help America Vote Act
5 of 2002 (as amended by this Act); or

6 (ii) to retrofit a voting system so that
7 it will meet such requirements,

8 in order to replace or upgrade (as the case may
9 be) voting systems purchased with funds re-
10 ceived under the Help America Vote Act of
11 2002 that do not require the use of or produce
12 paper ballots.

13 (B) WAIVER OF NOTICE AND COMMENT
14 REQUIREMENTS.—The requirements of sub-
15 paragraphs (A), (B), and (C) of section
16 254(a)(11) of the Help America Vote Act of
17 2002 shall not apply to any State using funds
18 received under such Act for the purposes de-
19 scribed in clause (i) or (ii) of subparagraph (A).

20 (7) EFFECTIVE DATE.—The amendments made
21 by this subsection shall apply with respect to fiscal
22 years beginning with fiscal year 2008.

23 (e) RESTRICTION ON USE OF DIRECT RECORDING
24 ELECTRONIC VOTING SYSTEMS.—Section 301 of such Act

1 (42 U.S.C. 15481), as amended by this section, is amend-
2 ed—

3 (1) by redesignating subsections (b) and (c) as
4 subsections (c) through (d), respectively; and

5 (2) by inserting after subsection (a) the fol-
6 lowing new subsection:

7 “(b) RESTRICTION ON USE OF DIRECT RECORDING
8 ELECTRONIC VOTING SYSTEMS.—A direct recording elec-
9 tronic voting system may not be used to administer any
10 election for Federal office held in 2012 or any subsequent
11 year.”.

12 (f) EFFECTIVE DATE FOR NEW REQUIREMENTS.—
13 Section 301(d) of such Act (42 U.S.C. 15481(d)), as re-
14 designated by subsection (e), is amended to read as fol-
15 lows:

16 “(d) EFFECTIVE DATE.—

17 “(1) IN GENERAL.—Except as provided in para-
18 graph (2), each State and jurisdiction shall be re-
19 quired to comply with the requirements of this sec-
20 tion on and after January 1, 2006.

21 “(2) SPECIAL RULE FOR CERTAIN REQUIRE-
22 MENTS.—

23 “(A) IN GENERAL.—Except as provided in
24 subparagraph (B), the requirements of this sec-
25 tion which are first imposed on a State and ju-

1 jurisdiction pursuant to the amendments made by
2 section 2 of the Voter Confidence and Increased
3 Accessibility Act of 2007 shall apply with re-
4 spect to the regularly scheduled general election
5 for Federal office held in November 2008 and
6 each succeeding election for Federal office.

7 “(B) DELAY FOR JURISDICTIONS USING
8 CERTAIN PAPER BALLOT PRINTERS OR CERTAIN
9 PAPER BALLOT-EQUIPPED ACCESSIBLE MA-
10 CHINES IN 2006.—

11 “(i) DELAY.—In the case of a jurisdic-
12 tion described in clause (ii), subpara-
13 graph (A) shall apply to the jurisdiction as
14 if the reference in such subparagraph to
15 ‘the regularly scheduled general election
16 for Federal office held in November 2008
17 and each succeeding election for Federal
18 office’ were a reference to ‘elections for
19 Federal office occurring during 2012 and
20 each succeeding year’, but only with re-
21 spect to the following requirements of this
22 section:

23 “(I) Paragraph (3)(B)(ii)(I) and
24 (II) of subsection (a) (relating to ac-

1 cess to verification from the durable
2 paper ballot).

3 “(II) Paragraph (12) of sub-
4 section (a) (relating to durability and
5 readability requirements for ballots).

6 “(ii) JURISDICTIONS DESCRIBED.—A
7 jurisdiction described in this clause is—

8 “(I) a jurisdiction which used
9 thermal reel-to-reel voter verified
10 paper ballot printers attached to di-
11 rect recording electronic voting ma-
12 chines for the administration of the
13 regularly scheduled general election
14 for Federal office held in November
15 2006 and which will continue to use
16 such printers (or other printers which
17 meet the requirements of paragraph
18 (3)(B)(ii)(I) and (II) of subsection
19 (a)) attached to such voting machines
20 for the administration of elections for
21 Federal office held in years before
22 2012; or

23 “(II) a jurisdiction which used
24 voting machines which met the acces-
25 sibility requirements of paragraph (3)

1 of subsection (a) (as in effect with re-
 2 spect to such election) for the admin-
 3 istration of the regularly scheduled
 4 general election for Federal office held
 5 in November 2006 and which used or
 6 produced a paper ballot, and which
 7 will continue to use such voting ma-
 8 chines (or other voting machines
 9 which meet the requirements of this
 10 section) for the administration of elec-
 11 tions for Federal office held in years
 12 before 2012.”.

13 **SEC. 3. ENHANCEMENT OF ENFORCEMENT OF HELP AMER-**
 14 **ICA VOTE ACT OF 2002.**

15 Section 401 of such Act (42 U.S.C. 15511) is amend-
 16 ed—

17 (1) by striking “The Attorney General” and in-
 18 serting “(a) IN GENERAL.—The Attorney General”;

19 and

20 (2) by adding at the end the following new sub-
 21 sections:

22 “(b) FILING OF COMPLAINTS BY AGGRIEVED PER-
 23 SONS.—

24 “(1) IN GENERAL.—A person who is aggrieved
 25 by a violation of section 301, 302, or 303 which has

1 occurred, is occurring, or is about to occur may file
2 a written, signed, notarized complaint with the At-
3 torney General describing the violation and request-
4 ing the Attorney General to take appropriate action
5 under this section. The Attorney General shall im-
6 mediately provide a copy of a complaint filed under
7 the previous sentence to the entity responsible for
8 administering the State-based administrative com-
9 plaint procedures described in section 402(a) for the
10 State involved.

11 “(2) RESPONSE BY ATTORNEY GENERAL.—The
12 Attorney General shall respond to each complaint
13 filed under paragraph (1), in accordance with proce-
14 dures established by the Attorney General that re-
15 quire responses and determinations to be made with-
16 in the same (or shorter) deadlines which apply to a
17 State under the State-based administrative com-
18 plaint procedures described in section 402(a)(2).
19 The Attorney General shall immediately provide a
20 copy of the response made under the previous sen-
21 tence to the entity responsible for administering the
22 State-based administrative complaint procedures de-
23 scribed in section 402(a) for the State involved.

24 “(c) CLARIFICATION OF AVAILABILITY OF PRIVATE
25 RIGHT OF ACTION.—Nothing in this section may be con-

1 strued to prohibit any person from bringing an action
 2 under section 1979 of the Revised Statutes of the United
 3 States (42 U.S.C. 1983) (including any individual who
 4 seeks to enforce the individual’s right to a voter-verified
 5 paper ballot, the right to have the voter-verified paper bal-
 6 lot counted in accordance with this Act, or any other right
 7 under subtitle A of title III) to enforce the uniform and
 8 nondiscriminatory election technology and administration
 9 requirements under sections 301, 302, and 303.

10 “(d) NO EFFECT ON STATE PROCEDURES.—Nothing
 11 in this section may be construed to affect the availability
 12 of the State-based administrative complaint procedures re-
 13 quired under section 402 to any person filing a complaint
 14 under this subsection.”.

15 **SEC. 4. REQUIREMENT FOR MANDATORY MANUAL AUDITS**
 16 **BY HAND COUNT.**

17 (a) MANDATORY MANUAL AUDITS.—Title III of the
 18 Help America Vote Act of 2002 (42 U.S.C. 15481 et seq.)
 19 is amended by adding at the end the following new sub-
 20 title:

21 **“Subtitle C—Mandatory Manual**
 22 **Audits**

23 **“SEC. 321. REQUIRING AUDITS OF RESULTS OF ELECTIONS.**

24 “(a) REQUIRING AUDITS.—

1 “(1) IN GENERAL.—In accordance with this
2 subtitle, each State shall administer, without ad-
3 vance notice to the precincts selected, audits of the
4 results of elections for Federal office held in the
5 State (and, at the option of the State or jurisdiction
6 involved, of elections for State and local office held
7 at the same time as such election) consisting of ran-
8 dom hand counts of the voter-verified paper ballots
9 required to be produced and preserved pursuant to
10 section 301(a)(2).

11 “(2) EXCEPTION FOR CERTAIN ELECTIONS.—A
12 State shall not be required to administer an audit of
13 the results of an election for Federal office under
14 this subtitle if the winning candidate in the elec-
15 tion—

16 “(A) had no opposition on the ballot; or

17 “(B) received 80 percent or more of the
18 total number of votes cast in the election, as de-
19 termined on the basis of the final unofficial vote
20 count.

21 “(b) DETERMINATION OF ENTITY CONDUCTING AU-
22 DITS; APPLICATION OF GAO INDEPENDENCE STAND-
23 ARDS.—The State shall administer audits under this sub-
24 title through an entity selected for such purpose by the
25 State in accordance with such criteria as the State con-

1 siders appropriate consistent with the requirements of this
2 subtitle, except that the entity must meet the general
3 standards established by the Comptroller General and as
4 set forth in the Comptroller General’s Government Audit-
5 ing Standards to ensure the independence (including the
6 organizational independence) of entities performing finan-
7 cial audits, attestation engagements, and performance au-
8 dits.

9 “(c) REFERENCES TO ELECTION AUDITOR.—In this
10 subtitle, the term ‘Election Auditor’ means, with respect
11 to a State, the entity selected by the State under sub-
12 section (b).

13 **“SEC. 322. NUMBER OF BALLOTS COUNTED UNDER AUDIT.**

14 “(a) IN GENERAL.—Except as provided in subsection
15 (b), the number of voter-verified paper ballots which will
16 be subject to a hand count administered by the Election
17 Auditor of a State under this subtitle with respect to an
18 election shall be determined as follows:

19 “(1) In the event that the unofficial count as
20 described in section 323(a)(1) reveals that the mar-
21 gin of victory between the two candidates receiving
22 the largest number of votes in the election is less
23 than 1 percent of the total votes cast in that elec-
24 tion, the hand counts of the voter-verified paper bal-
25 lots shall occur in at least 10 percent of all precincts

1 or equivalent locations (or alternative audit units
2 used in accordance with the method provided for
3 under subsection (b)) in the Congressional district
4 involved (in the case of an election for the House of
5 Representatives) or the State (in the case of any
6 other election for Federal office).

7 “(2) In the event that the unofficial count as
8 described in section 323(a)(1) reveals that the mar-
9 gin of victory between the two candidates receiving
10 the largest number of votes in the election is greater
11 than or equal to 1 percent but less than 2 percent
12 of the total votes cast in that election, the hand
13 counts of the voter-verified paper ballots shall occur
14 in at least 5 percent of all precincts or equivalent lo-
15 cations (or alternative audit units used in accord-
16 ance with the method provided for under subsection
17 (b)) in the Congressional district involved (in the
18 case of an election for the House of Representatives)
19 or the State (in the case of any other election for
20 Federal office).

21 “(3) In the event that the unofficial count as
22 described in section 323(a)(1) reveals that the mar-
23 gin of victory between the two candidates receiving
24 the largest number of votes in the election is equal
25 to or greater than 2 percent of the total votes cast

1 in that election, the hand counts of the voter-verified
2 paper ballots shall occur in at least 3 percent of all
3 precincts or equivalent locations (or alternative audit
4 units used in accordance with the method provided
5 for under subsection (b)) in the Congressional dis-
6 trict involved (in the case of an election for the
7 House of Representatives) or the State (in the case
8 of any other election for Federal office).

9 “(b) USE OF ALTERNATIVE MECHANISM.—Notwith-
10 standing subsection (a), a State may adopt and apply an
11 alternative mechanism to determine the number of voter-
12 verified paper ballots which will be subject to the hand
13 counts required under this subtitle with respect to an elec-
14 tion, so long as the alternative mechanism uses the voter-
15 verified paper ballots to conduct the audit and the Na-
16 tional Institute of Standards and Technology determines
17 that the alternative mechanism will be at least as statis-
18 tically effective in ensuring the accuracy of the election
19 results as the procedure under this subtitle.

20 **“SEC. 323. PROCESS FOR ADMINISTERING AUDITS.**

21 “(a) IN GENERAL.—The Election Auditor of a State
22 shall administer an audit under this section of the results
23 of an election in accordance with the following procedures:

24 “(1) Within 24 hours after the State announces
25 the final unofficial vote count (as defined by the

1 State) in each precinct in the State, the Election
2 Auditor shall determine and then announce the pre-
3 cinets or equivalent locations (or alternative audit
4 units used in accordance with the method provided
5 under section 322(b)) in the State in which it will
6 administer the audits.

7 “(2) With respect to votes cast at the precinct
8 or equivalent location on or before the date of the
9 election (other than provisional ballots described in
10 paragraph (3)), the Election Auditor shall admin-
11 ister the hand count of the votes on the voter-
12 verified paper ballots required to be produced and
13 preserved under section 301(a)(2)(A) and the com-
14 parison of the count of the votes on those ballots
15 with the final unofficial count of such votes as an-
16 nounced by the State.

17 “(3) With respect to votes cast other than at
18 the precinct on the date of the election (other than
19 votes cast before the date of the election described
20 in paragraph (2)) or votes cast by provisional ballot
21 on the date of the election which are certified and
22 counted by the State on or after the date of the elec-
23 tion, including votes cast by absent uniformed serv-
24 ices voters and overseas voters under the Uniformed
25 and Overseas Citizens Absentee Voting Act, the

1 Election Auditor shall administer the hand count of
2 the votes on the applicable voter-verified paper bal-
3 lots required to be produced and preserved under
4 section 301(a)(2)(A) and the comparison of the
5 count of the votes on those ballots with the final un-
6 official count of such votes as announced by the
7 State.

8 “(b) USE OF PERSONNEL.—In administering the au-
9 dits, the Election Auditor may utilize the services of the
10 personnel of the State or jurisdiction, including election
11 administration personnel and poll workers, without regard
12 to whether or not the personnel have professional auditing
13 experience.

14 “(c) LOCATION.—The Election Auditor shall admin-
15 ister an audit of an election—

16 “(1) at the location where the ballots cast in
17 the election are stored and counted after the date of
18 the election or such other appropriate and secure lo-
19 cation agreed upon by the Election Auditor and the
20 individual that is responsible under State law for the
21 custody of the ballots; and

22 “(2) in the presence of the personnel who under
23 State law are responsible for the custody of the bal-
24 lots.

1 “(d) SPECIAL RULE IN CASE OF DELAY IN REPORT-
2 ING ABSENTEE VOTE COUNT.—In the case of a State in
3 which the final count of absentee and provisional votes is
4 not announced until after the expiration of the 7-day pe-
5 riod which begins on the date of the election, the Election
6 Auditor shall initiate the process described in subsection
7 (a) for administering the audit not later than 24 hours
8 after the State announces the final unofficial vote count
9 for the votes cast at the precinct or equivalent location
10 on or before the date of the election, and shall initiate
11 the administration of the audit of the absentee and provi-
12 sional votes pursuant to subsection (a)(3) not later than
13 24 hours after the State announces the final unofficial
14 count of such votes.

15 “(e) ADDITIONAL AUDITS IF CAUSE SHOWN.—

16 “(1) IN GENERAL.—If the Election Auditor
17 finds that any of the hand counts administered
18 under this section do not match the final unofficial
19 tally of the results of an election, the Election Audi-
20 tor shall administer hand counts under this section
21 of such additional precincts (or equivalent jurisdic-
22 tions) as the Election Auditor considers appropriate
23 to resolve any concerns resulting from the audit and
24 ensure the accuracy of the results.

1 “(2) ESTABLISHMENT AND PUBLICATION OF
2 PROCEDURES GOVERNING ADDITIONAL AUDITS.—
3 Not later than August 1, 2008, each State shall es-
4 tablish and publish procedures for carrying out the
5 additional audits under this subsection, including the
6 means by which the State shall resolve any concerns
7 resulting from the audit with finality and ensure the
8 accuracy of the results.

9 “(f) PUBLIC OBSERVATION OF AUDITS.—Each audit
10 conducted under this section shall be conducted in a man-
11 ner that allows public observation of the entire process.

12 **“SEC. 324. SELECTION OF PRECINCTS.**

13 “(a) IN GENERAL.—Except as provided in subsection
14 (c), the selection of the precincts in the State in which
15 the Election Auditor of the State shall administer the
16 hand counts under this subtitle shall be made by the Elec-
17 tion Auditor on an entirely random basis using a uniform
18 distribution in which all precincts in a Congressional dis-
19 trict have an equal chance of being selected, in accordance
20 with procedures adopted by the National Institute of
21 Standards and Technology, except that at least one pre-
22 cinct shall be selected at random in each county.

23 “(b) PUBLIC SELECTION.—The random selection of
24 precincts under subsection (a) shall be conducted in pub-
25 lic, at a time and place announced in advance.

1 “(c) MANDATORY SELECTION OF PRECINCTS ESTAB-
2 LISHED SPECIFICALLY FOR ABSENTEE BALLOTS.—If a
3 State establishes a separate precinct for purposes of
4 counting the absentee ballots cast in an election and treats
5 all absentee ballots as having been cast in that precinct,
6 and if the state does not make absentee ballots sortable
7 by precinct and include those ballots in the hand count
8 administered with respect to that precinct, the State shall
9 include that precinct among the precincts in the State in
10 which the Election Auditor shall administer the hand
11 counts under this subtitle.

12 “(d) DEADLINE FOR ADOPTION OF PROCEDURES BY
13 COMMISSION.—The National Institute of Standards and
14 Technology shall adopt the procedures described in sub-
15 section (a) not later than March 31, 2008, and shall pub-
16 lish them in the Federal Register upon adoption.

17 **“SEC. 325. PUBLICATION OF RESULTS.**

18 “(a) SUBMISSION TO COMMISSION.—As soon as prac-
19 ticable after the completion of an audit under this subtitle,
20 the Election Auditor of a State shall— submit to the Com-
21 mission the results of the audit, and shall include in the
22 submission a comparison of the results of the election in
23 the precinct as determined by the Election Auditor under
24 the audit and the final unofficial vote count in the precinct
25 as announced by the State and all undervotes, overvotes,

1 blank ballots, and spoiled, voided, or cancelled ballots, as
2 well as a list of any discrepancies discovered between the
3 initial, subsequent, and final hand counts administered by
4 the Election Auditor and such final unofficial vote count
5 and any explanation for such discrepancies, broken down
6 by the categories of votes described in paragraphs (2) and
7 (3) of section 323(a).

8 “(b) PUBLICATION BY COMMISSION.—Immediately
9 after receiving the submission of the results of an audit
10 from the Election Auditor of a State under subsection (a),
11 the Commission shall publicly announce and publish the
12 information contained in the submission.

13 “(c) DELAY IN CERTIFICATION OF RESULTS BY
14 STATE.—

15 “(1) PROHIBITING CERTIFICATION UNTIL COM-
16 PLETION OF AUDITS.—No State may certify the re-
17 sults of any election which is subject to an audit
18 under this subtitle prior to—

19 “(A) to the completion of the audit (and,
20 if required, any additional audit conducted
21 under section 323(e)(1)) and the announcement
22 and submission of the results of each such audit
23 to the Commission for publication of the infor-
24 mation required under this section; and

1 “(B) the completion of any procedure es-
2 tablished by the State pursuant to section
3 323(e)(2) to resolve discrepancies and ensure
4 the accuracy of results.

5 “(2) DEADLINE FOR COMPLETION OF AUDITS
6 OF PRESIDENTIAL ELECTIONS.—In the case of an
7 election for electors for President and Vice President
8 which is subject to an audit under this subtitle, the
9 State shall complete the audits and announce and
10 submit the results to the Commission for publication
11 of the information required under this section in
12 time for the State to certify the results of the elec-
13 tion and provide for the final determination of any
14 controversy or contest concerning the appointment
15 of such electors prior to the deadline described in
16 section 6 of title 3, United States Code.

17 **“SEC. 326. PAYMENTS TO STATES.**

18 “(a) PAYMENTS FOR COSTS OF CONDUCTING AU-
19 DITS.—In accordance with the requirements and proce-
20 dures of this section, the Commission shall make a pay-
21 ment to a State to cover the costs incurred by the State
22 in carrying out this subtitle with respect to the elections
23 that are the subject of the audits conducted under this
24 subtitle.

1 “(b) CERTIFICATION OF COMPLIANCE AND ANTICI-
2 PATED COSTS.—

3 “(1) CERTIFICATION REQUIRED.—In order to
4 receive a payment under this section, a State shall
5 submit to the Commission, in such form as the Com-
6 mission may require, a statement containing—

7 “(A) a certification that the State will con-
8 duct the audits required under this subtitle in
9 accordance with all of the requirements of this
10 subtitle;

11 “(B) a notice of the reasonable costs in-
12 curred or the reasonable costs anticipated to be
13 incurred by the State in carrying out this sub-
14 title with respect to the elections involved; and

15 “(C) such other information and assur-
16 ances as the Commission may require.

17 “(2) AMOUNT OF PAYMENT.—The amount of a
18 payment made to a State under this section shall be
19 equal to the reasonable costs incurred or the reason-
20 able costs anticipated to be incurred by the State in
21 carrying out this subtitle with respect to the elec-
22 tions involved, as set forth in the statement sub-
23 mitted under paragraph (1).

24 “(3) TIMING OF NOTICE.—The State may not
25 submit a notice under paragraph (1) until can-

1 didates have been selected to appear on the ballot
2 for all of the elections for Federal office which will
3 be the subject of the audits involved.

4 “(c) TIMING OF PAYMENTS.—The Commission shall
5 make the payment required under this section to a State
6 not later than 30 days after receiving the notice submitted
7 by the State under subsection (b).

8 “(d) RECOUPMENT OF OVERPAYMENTS.—No pay-
9 ment may be made to a State under this section unless
10 the State agrees to repay to the Commission the excess
11 (if any) of—

12 “(1) the amount of the payment received by the
13 State under this section with respect to the elections
14 involved; over

15 “(2) the actual costs incurred by the State in
16 carrying out this subtitle with respect to the elec-
17 tions involved.

18 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated to the Commission for
20 fiscal year 2008 and each succeeding fiscal year
21 \$100,000,000 for payments under this section.

1 **“SEC. 327. EXCEPTION FOR ELECTIONS SUBJECT TO RE-**
2 **COUNT UNDER STATE LAW PRIOR TO CER-**
3 **TIFICATION.**

4 “(a) EXCEPTION.—This subtitle does not apply to
5 any election for which a recount under State law will com-
6 mence prior to the certification of the results of the elec-
7 tion, including but not limited to a recount required auto-
8 matically because of the margin of victory between the 2
9 candidates receiving the largest number of votes in the
10 election, but only if each of the following applies to the
11 recount:

12 “(1) The recount commences prior to the deter-
13 mination and announcement by the Election Auditor
14 under section 323(a)(1) of the precincts in the State
15 in which it will administer the audits under this sub-
16 title.

17 “(2) If the recount would apply to fewer than
18 100 percent of the ballots cast in the election—

19 “(A) the number of ballots counted will be
20 at least as many as would be counted if an
21 audit were conducted with respect to the elec-
22 tion in accordance with this subtitle; and

23 “(B) the selection of the precincts in which
24 the recount will be conducted will be made in
25 accordance with the random selection proce-
26 dures applicable under section 324.

1 “(3) The recount for the election meets the re-
2 quirements of section 323(f) (relating to public ob-
3 servation).

4 “(4) The State meets the requirements of sec-
5 tion 325 (relating to the publication of results and
6 the delay in the certification of results) with respect
7 to the recount.

8 “(b) CLARIFICATION OF EFFECT ON OTHER RE-
9 QUIREMENTS.—Nothing in this section may be construed
10 to waive the application of any other provision of this Act
11 to any election (including the requirement set forth in sec-
12 tion 301(a)(2) that the voter verified paper ballots serve
13 as the vote of record and shall be counted by hand in all
14 audits and recounts, including audits and recounts de-
15 scribed in this subtitle).

16 **“SEC. 328. EFFECTIVE DATE.**

17 “‘This subtitle shall apply with respect to elections for
18 Federal office beginning with the regularly scheduled gen-
19 eral elections held in November 2008.’”.

20 (b) AVAILABILITY OF ENFORCEMENT UNDER HELP
21 AMERICA VOTE ACT OF 2002.—Section 401 of such Act
22 (42 U.S.C. 15511), as amended by section 3, is amend-
23 ed—

1 (1) in subsection (a), by striking the period at
2 the end and inserting the following: “, or the re-
3 quirements of subtitle C of title III.”;

4 (2) in subsection (b)(1), by striking “303” and
5 inserting “303, or subtitle C of title III,”; and

6 (3) in subsection (c)—

7 (A) by striking “subtitle A” and inserting
8 “subtitles A or C”, and

9 (B) by striking the period at the end and
10 inserting the following: “, or the requirements
11 of subtitle C of title III.”.

12 (c) GUIDANCE ON BEST PRACTICES FOR ALTER-
13 NATIVE AUDIT MECHANISMS.—

14 (1) IN GENERAL.—Not later than May 1, 2008,
15 the Director of the National Institute for Standards
16 and Technology shall establish guidance for States
17 that wish to establish alternative audit mechanisms
18 under section 322(b) of the Help America Vote Act
19 of 2002 (as added by subsection (a)). Such guidance
20 shall be based upon scientifically and statistically
21 reasonable assumptions for the purpose of creating
22 an alternative audit mechanism that will be at least
23 as effective in ensuring the accuracy of election re-
24 sults and as transparent as the procedure under
25 subtitle C of title III of such Act (as so added).

1 (2) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated to carry out
3 paragraph (1) \$100,000, to remain available until
4 expended.

5 (d) CLERICAL AMENDMENT.—The table of contents
6 of such Act is amended by adding at the end of the items
7 relating to title III the following:

“Subtitle C—Mandatory Manual Audits

“Sec. 321. Requiring audits of results of elections.

“Sec. 322. Number of ballots counted under audit.

“Sec. 323. Process for administering audits.

“Sec. 324. Selection of precincts.

“Sec. 325. Publication of results.

“Sec. 326. Payments to States.

“Sec. 327. Exception for elections subject to recount under State law prior to
certification.

“Sec. 328. Effective date.”.

8 **SEC. 5. REPEAL OF EXEMPTION OF ELECTION ASSISTANCE**

9 **COMMISSION FROM CERTAIN GOVERNMENT**

10 **CONTRACTING REQUIREMENTS.**

11 (a) IN GENERAL.—Section 205 of the Help America
12 Vote Act of 2002 (42 U.S.C. 15325) is amended by strik-
13 ing subsection (e).

14 (b) EFFECTIVE DATE.—The amendment made by
15 subsection (a) shall apply with respect to contracts entered
16 into by the Election Assistance Commission on or after
17 the date of the enactment of this Act.

18 **SEC. 6. EFFECTIVE DATE.**

19 Except as otherwise provided, this Act and the
20 amendments made by this Act shall apply with respect to

1 the regularly scheduled general election for Federal office
2 in November 2008 and each succeeding election for Fed-
3 eral office.

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