

**[DISCUSSION DRAFT]**

JANUARY 31, 2009

111TH CONGRESS  
1ST SESSION**H. R.** \_\_\_\_\_

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.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. HOLT introduced the following bill; which was referred to the Committee  
on \_\_\_\_\_

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**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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Voter Confidence and Increased Accessibility Act of  
6 2009”.

1 (b) TABLE OF CONTENTS.—The table of contents of  
2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PROMOTING ACCURACY, INTEGRITY, AND SECURITY  
THROUGH VOTER-VERIFIED PERMANENT PAPER BALLOT

Sec. 101. Paper ballot and manual counting requirements.

Sec. 102. Accessibility and ballot verification for individuals with disabilities.

Sec. 103. Additional voting system requirements.

Sec. 104. Availability of additional funding to enable States to meet costs of revised requirements.

Sec. 105. Effective date for new requirements.

TITLE II—ENHANCEMENT OF ENFORCEMENT

Sec. 201. Enhancement of enforcement of Help America Vote Act of 2002.

TITLE III—REQUIREMENT FOR MANDATORY MANUAL AUDITS BY  
HAND COUNT

Sec. 301. 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.

Sec. 302. Availability of enforcement under Help America Vote Act of 2002.

Sec. 303. Guidance on best practices for alternative audit mechanisms.

Sec. 304. Clerical amendment.

TITLE IV—REPEAL OF EXEMPTION OF ELECTION ASSISTANCE  
COMMISSION FROM CERTAIN GOVERNMENT CONTRACTING RE-  
QUIREMENTS

Sec. 401. Repeal of exemption of Election Assistance Commission from certain government contracting requirements.

TITLE V—EFFECTIVE DATE

Sec. 501. Effective date.

1 **TITLE I—PROMOTING ACCU-**  
2 **RACY, INTEGRITY, AND SECU-**  
3 **RITY THROUGH VOTER-**  
4 **VERIFIED PERMANENT**  
5 **PAPER BALLOT**

6 **SEC. 101. PAPER BALLOT AND MANUAL COUNTING RE-**  
7 **QUIREMENTS.**

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

11 “(2) PAPER BALLOT REQUIREMENT.—

12 “(A) VOTER-VERIFIED PAPER BALLOTS.—

13 “(i) PAPER BALLOT REQUIREMENT.—

14 (I) The voting system shall require the use  
15 of an individual, durable, voter-verified,  
16 paper ballot of the voter’s vote that shall  
17 be marked and made available for inspec-  
18 tion and verification by the voter before  
19 the voter’s vote is cast and counted. For  
20 purposes of this subclause, the term ‘indi-  
21 vidual, durable, voter-verified, paper ballot’  
22 means a paper ballot marked by the voter  
23 for the purpose of being counted by hand  
24 or read by an optical scanner or other  
25 counting device, or a paper ballot marked

1 through the use of a nontabulating ballot  
2 marking device or system.

3 “(II) The voting system shall provide  
4 the voter with an opportunity to correct  
5 any error on the paper ballot before the  
6 permanent voter-verified paper ballot is  
7 preserved in accordance with clause (ii).

8 “(III) The voting system shall not  
9 preserve the voter-verified paper ballots in  
10 any manner that makes it possible, at any  
11 time after the ballot has been cast, to asso-  
12 ciate a voter with the record of the voter’s  
13 vote without the voter’s consent.

14 “(ii) PRESERVATION AS OFFICIAL  
15 RECORD.—The individual, durable, voter-  
16 verified, paper ballot used in accordance  
17 with clause (i) shall be preserved and used  
18 as the official ballot for purposes of any re-  
19 count or audit conducted with respect to  
20 any election for Federal office in which the  
21 voting system is used.

22 “(iii) MANUAL COUNTING REQUIRE-  
23 MENTS FOR RECOUNTS AND AUDITS.—(I)  
24 Each paper ballot used pursuant to clause  
25 (i) shall be suitable for a manual audit,

1 and shall be counted by hand in any re-  
2 count or audit conducted with respect to  
3 any election for Federal office.

4 “(II) In the event of any inconsis-  
5 tencies or irregularities between any elec-  
6 tronic vote tallies and the vote tallies de-  
7 termined by counting by hand the indi-  
8 vidual, durable, voter-verified, paper ballots  
9 used pursuant to clause (i), and subject to  
10 subparagraph (B), the individual, durable,  
11 voter-verified, paper ballots shall be the  
12 true and correct record of the votes cast.

13 “(B) SPECIAL RULE FOR TREATMENT OF  
14 DISPUTES WHEN PAPER BALLOTS HAVE BEEN  
15 SHOWN TO BE COMPROMISED.—

16 “(i) IN GENERAL.—In the event  
17 that—

18 “(I) there is any inconsistency  
19 between any electronic vote tallies and  
20 the vote tallies determined by count-  
21 ing by hand the individual, durable,  
22 voter-verified, paper ballots used pur-  
23 suant to subparagraph (A)(i) with re-  
24 spect to any election for Federal of-  
25 fice; and

1                   “(II) it is demonstrated by clear  
2                   and convincing evidence (as deter-  
3                   mined in accordance with the applica-  
4                   ble standards in the jurisdiction in-  
5                   volved) in any recount, audit, or con-  
6                   test of the result of the election that  
7                   the paper ballots have been com-  
8                   promised (by damage or mischief or  
9                   otherwise) and that a sufficient num-  
10                  ber of the ballots have been so com-  
11                  promised that the result of the elec-  
12                  tion could be changed,

13                  the determination of the appropriate rem-  
14                  edy with respect to the election shall be  
15                  made in accordance with applicable State  
16                  law, except that the electronic tally shall  
17                  not be used as the exclusive basis for de-  
18                  termining the official certified vote tally.

19                  “(ii) RULE FOR CONSIDERATION OF  
20                  BALLOTS ASSOCIATED WITH EACH VOTING  
21                  MACHINE.—For purposes of clause (i),  
22                  only the paper ballots deemed com-  
23                  promised, if any, shall be considered in the  
24                  calculation of whether or not the result of

1                   the election could be changed due to the  
2                   compromised paper ballots.”.

3           (b) CONFORMING AMENDMENT CLARIFYING APPLI-  
4   CABILITY OF ALTERNATIVE LANGUAGE ACCESSIBILITY.—  
5   Section 301(a)(4) of such Act (42 U.S.C. 15481(a)(4))  
6   is amended by inserting “(including the paper ballots re-  
7   quired to be used under paragraph (2))” after “voting sys-  
8   tem”.

9           (c) OTHER CONFORMING AMENDMENTS.—Section  
10   301(a)(1) of such Act (42 U.S.C. 15481(a)(1)) is amend-  
11   ed—

12           (1) in subparagraph (A)(i), by striking “count-  
13   ed” and inserting “counted, in accordance with  
14   paragraphs (2) and (3)”;

15           (2) in subparagraph (A)(ii), by striking “count-  
16   ed” and inserting “counted, in accordance with  
17   paragraphs (2) and (3)”;

18           (3) in subparagraph (A)(iii), by striking “count-  
19   ed” each place it appears and inserting “counted, in  
20   accordance with paragraphs (2) and (3)”;

21           (4) in subparagraph (B)(ii), by striking “count-  
22   ed” and inserting “counted, in accordance with  
23   paragraphs (2) and (3)”.

1 **SEC. 102. ACCESSIBILITY AND BALLOT VERIFICATION FOR**  
2 **INDIVIDUALS WITH DISABILITIES.**

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

6 “(B)(i) satisfy the requirement of subpara-  
7 graph (A) through the use of at least one voting  
8 system equipped for individuals with disabili-  
9 ties, including nonvisual and enhanced visual  
10 accessibility for the blind and visually impaired,  
11 at each polling place; and

12 “(ii) meet the requirements of subpara-  
13 graph (A) and paragraph (2)(A) by using a sys-  
14 tem that—

15 “(I) allows the voter to privately and  
16 independently verify the permanent paper  
17 ballot through the presentation, in acces-  
18 sible form, of the printed or marked vote  
19 selections [from] the same printed or  
20 marked information that would be used for  
21 any vote counting or auditing;

22 “(II) ensures that the entire process  
23 of ballot verification and vote casting is  
24 equipped for individuals with disabilities,  
25 including nonvisual and enhanced visual



1 accessibility for the blind and visually im-  
2 paired; and

3 “(III) does not preclude the supple-  
4 mentary use of Braille or tactile ballots;  
5 and”.

6 (b) SPECIFIC REQUIREMENT OF STUDY, TESTING,  
7 AND DEVELOPMENT OF ACCESSIBLE PAPER BALLOT  
8 VERIFICATION MECHANISMS.—

9 (1) STUDY AND REPORTING.—Subtitle C of  
10 title II of such Act (42 U.S.C. 15381 et seq.) is  
11 amended—

12 (A) by redesignating section 247 as section  
13 248; and

14 (B) by inserting after section 246 the fol-  
15 lowing new section:

16 **“SEC. 247. STUDY AND REPORT ON ACCESSIBLE PAPER**  
17 **BALLOT VERIFICATION MECHANISMS.**

18 “(a) STUDY AND REPORT.—The Director of the Na-  
19 tional Institute of Standards and Technology shall study,  
20 test, and develop best practices to enhance the accessibility  
21 of paper ballot verification mechanisms for individuals  
22 with disabilities, for voters whose primary language is not  
23 English, and for voters with difficulties in literacy, includ-  
24 ing best practices for the mechanisms themselves and the  
25 processes through which the mechanisms are used. In car-

1 rying out this section, the Director shall specifically inves-  
2 tigate existing and potential methods or devices, including  
3 non-electronic devices, that will assist such individuals and  
4 voters in marking voter-verified paper ballots and pre-  
5 senting or transmitting the information printed or marked  
6 on such ballots back to such individuals and voters.

7 “(b) COORDINATION WITH GRANTS FOR TECH-  
8 NOLOGY IMPROVEMENTS.—The Director shall coordinate  
9 the activities carried out under subsection (a) with the re-  
10 search conducted under the grant program carried out by  
11 the Commission under section 271, to the extent that the  
12 Director and Commission determine necessary to provide  
13 for the advancement of accessible voting technology.

14 “(c) DEADLINE.—The Director shall complete the re-  
15 quirements of subsection (a) not later than December 31,  
16 2010.

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

20 (2) CLERICAL AMENDMENT.—The table of con-  
21 tents of such Act is amended—

22 (A) by redesignating the item relating to  
23 section 247 as relating to section 248; and

24 (B) by inserting after the item relating to  
25 section 246 the following new item:

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

1 (c) CLARIFICATION OF ACCESSIBILITY STANDARDS  
2 UNDER VOLUNTARY VOTING SYSTEM GUIDANCE.—In  
3 adopting any voluntary guidance under subtitle B of title  
4 III of the Help America Vote Act with respect to the ac-  
5 cessibility of the paper ballot verification requirements for  
6 individuals with disabilities, the Election Assistance Com-  
7 mission shall include and apply the same accessibility  
8 standards applicable under the voluntary guidance adopt-  
9 ed for accessible voting systems under such subtitle.

10 **SEC. 103. ADDITIONAL VOTING SYSTEM REQUIREMENTS.**

11 (a) REQUIREMENTS DESCRIBED.—Section 301(a) of  
12 the Help America Vote Act of 2002 (42 U.S.C. 15481(a))  
13 is amended by adding at the end the following new para-  
14 graphs:

15 “(7) PROHIBITING USE OF UNCERTIFIED ELEC-  
16 TION-DEDICATED VOTING SYSTEM TECHNOLOGIES;  
17 DISCLOSURE REQUIREMENTS.—

18 “(A) IN GENERAL.—A voting system used  
19 in an election for Federal office in a State may  
20 not at any time during the election contain or  
21 use any election-dedicated voting system tech-  
22 nology—

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

1           “(ii) which has not been deposited  
2           with an accredited laboratory described in  
3           section 231 to be held in escrow and dis-  
4           closed in accordance with this section.

5           “(B) REQUIREMENT FOR AND RESTRIC-  
6           TIONS ON DISCLOSURE.—An accredited labora-  
7           tory under section 231 with whom an election-  
8           dedicated voting system technology has been de-  
9           posited shall—

10           “(i) hold the technology in escrow;  
11           and

12           “(ii) disclose technology and informa-  
13           tion regarding the technology to another  
14           person if—

15           “(I) the person is a qualified per-  
16           son described in subparagraph (C)  
17           who has entered into a nondisclosure  
18           agreement with respect to the tech-  
19           nology which meets the requirements  
20           of subparagraph (D); or

21           “(II) the laboratory is required to  
22           disclose the technology to the person  
23           under State law, in accordance with  
24           the terms and conditions applicable  
25           under such law.

1 “(C) QUALIFIED PERSONS DESCRIBED.—

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

6 “(i) A governmental entity with re-  
7 sponsibility for the administration of vot-  
8 ing and election-related matters for pur-  
9 poses of reviewing, analyzing, or reporting  
10 on the technology.

11 “(ii) A party to pre- or post-election  
12 litigation challenging the result of an elec-  
13 tion or the administration or use of the  
14 technology used in an election, including  
15 but not limited to election contests or chal-  
16 lenges to the certification of the tech-  
17 nology, or an expert for a party to such  
18 litigation, for purposes of reviewing or ana-  
19 lyzing the technology to support or oppose  
20 the litigation, and all parties to the litiga-  
21 tion shall have access to the technology for  
22 such purposes.

23 “(iii) A person not described in clause  
24 (i) or (ii) who reviews, analyzes, or reports  
25 on the technology solely for an academic,

1 scientific, technological, or other investiga-  
2 tion or inquiry concerning the accuracy or  
3 integrity of the technology.

4 “(D) REQUIREMENTS FOR NONDISCLO-  
5 SURE AGREEMENTS.—A nondisclosure agree-  
6 ment entered into with respect to an election-  
7 dedicated voting system technology meets the  
8 requirements of this subparagraph if the agree-  
9 ment—

10 “(i) is limited in scope to coverage of  
11 the technology disclosed under subpara-  
12 graph (B) and any trade secrets and intel-  
13 lectual property rights related thereto;

14 “(ii) does not prohibit a signatory  
15 from entering into other nondisclosure  
16 agreements to review other technologies  
17 under this paragraph;

18 “(iii) exempts from coverage any in-  
19 formation the signatory lawfully obtained  
20 from another source or any information in  
21 the public domain;

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

1 “(v) prohibits the use of injunctions  
2 barring a signatory from carrying out any  
3 activity authorized under subparagraph  
4 (C), including injunctions limited to the  
5 period prior to a trial involving the tech-  
6 nology;

7 “(vi) is silent as to damages awarded  
8 for breach of the agreement, other than a  
9 reference to damages available under appli-  
10 cable law;

11 “(vii) allows disclosure of evidence of  
12 crime, including in response to a subpoena  
13 or warrant;

14 “(viii) allows the signatory to perform  
15 analyses on the technology (including by  
16 executing the technology), disclose reports  
17 and analyses that describe operational  
18 issues pertaining to the technology (includ-  
19 ing vulnerabilities to tampering, errors,  
20 risks associated with use, failures as a re-  
21 sult of use, and other problems), and de-  
22 scribe or explain why or how a voting sys-  
23 tem failed or otherwise did not perform as  
24 intended; and

1           “(ix) provides that the agreement  
2           shall be governed by the trade secret laws  
3           of the applicable State.

4           “(E) ELECTION-DEDICATED VOTING SYS-  
5           TEM TECHNOLOGY DEFINED.—For purposes of  
6           this paragraph:

7           “(i) IN GENERAL.—The term ‘elec-  
8           tion-dedicated voting system technology’  
9           means the following:

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

12           “(II) A complete disk image of  
13           the pre-build, build environment, and  
14           any file signatures to validate that it  
15           is unmodified.

16           “(III) A complete disk image of  
17           the post-build, build environment, and  
18           any file signatures to validate that it  
19           is unmodified.

20           “(IV) All executable code pro-  
21           duced by the trusted build and any  
22           file signatures to validate that it is  
23           unmodified.

24           “(V) Installation devices and  
25           software file signatures.



1           “(ii) EXCLUSION.—Such term does  
2           not include ‘commercial-off-the-shelf’ soft-  
3           ware and hardware defined under the 2005  
4           voluntary voting system guidelines adopted  
5           by the Commission under section 222.

6           “(8) PROHIBITION OF USE OF WIRELESS COM-  
7           MUNICATIONS DEVICES IN SYSTEMS OR DEVICES.—  
8           No system or device upon which ballots are pro-  
9           grammed or votes are cast or tabulated shall con-  
10          tain, use, or be accessible by any wireless, power-  
11          line, or concealed communication device, except that  
12          enclosed infrared communications devices which are  
13          certified for use in such device by the State and  
14          which cannot be used for any remote or wide area  
15          communications or used without the knowledge of  
16          poll workers shall be permitted.

17          “(9) PROHIBITING CONNECTION OF SYSTEM OR  
18          TRANSMISSION OF SYSTEM INFORMATION OVER THE  
19          INTERNET.—

20                 “(A) IN GENERAL.—No system or device  
21                 upon which ballots are programmed or votes are  
22                 cast or tabulated shall be connected to the  
23                 Internet at any time.

24                 “(B) RULE OF CONSTRUCTION.—Nothing  
25                 contained in this paragraph shall be deemed to

1 prohibit the Commission from conducting the  
2 studies under section 242 or to conduct other  
3 similar studies under any other provision of law  
4 in a manner consistent with this paragraph.

5 “(10) SECURITY STANDARDS FOR VOTING SYS-  
6 TEMS USED IN FEDERAL ELECTIONS.—

7 “(A) IN GENERAL.—No voting system may  
8 be used in an election for Federal office unless  
9 the manufacturer of such system and the elec-  
10 tion officials using such system meet the appli-  
11 cable requirements described in subparagraph  
12 (B).

13 “(B) REQUIREMENTS DESCRIBED.—The  
14 requirements described in this subparagraph  
15 are as follows:

16 “(i) The manufacturer and the elec-  
17 tion officials shall document the secure  
18 chain of custody for the handling of all  
19 software, hardware, vote storage media,  
20 blank ballots, and completed ballots used  
21 in connection with voting systems, and  
22 shall make the information available upon  
23 request to the Commission.

24 “(ii) The manufacturer shall disclose  
25 to an accredited laboratory under section

1 231 and to the appropriate election official  
2 any information required to be disclosed  
3 under paragraph (7).

4 “(iii) After the appropriate election  
5 official has certified the election-dedicated  
6 and other voting system software for use in  
7 an election, the manufacturer may not—

8 “(I) alter such software; or

9 “(II) insert or use in the voting  
10 system any software, software patch,  
11 or other software modification not cer-  
12 tified by the State for use in the elec-  
13 tion.

14 “(iv) At the request of the Commis-  
15 sion—

16 “(I) the appropriate election offi-  
17 cial shall submit information to the  
18 Commission regarding the State’s  
19 compliance with this subparagraph;  
20 and

21 “(II) the manufacturer shall sub-  
22 mit information to the Commission re-  
23 garding the manufacturer’s compli-  
24 ance with this subparagraph.

1           “(C) DEVELOPMENT AND PUBLICATION OF  
2           BEST PRACTICES ON DOCUMENTATION OF SE-  
3           CURE CHAIN OF CUSTODY.—Not later than Au-  
4           gust 1, 2010, the Commission shall develop and  
5           make publicly available best practices regarding  
6           the requirement of subparagraph (B)(i) and  
7           (B)(iii), and in the case of subparagraph  
8           (B)(iii), shall include best practices for certi-  
9           fying software patches and minor software  
10          modifications under short deadlines.

11          “(D) DISCLOSURE OF SECURE CHAIN OF  
12          CUSTODY.—The Commission shall make infor-  
13          mation provided to the Commission under sub-  
14          paragraph (B)(i) available to any person upon  
15          request.

16          “(11) DURABILITY AND READABILITY REQUIRE-  
17          MENTS FOR BALLOTS.—

18                 “(A) DURABILITY REQUIREMENTS FOR  
19                 PAPER BALLOTS.—

20                         “(i) IN GENERAL.—All voter-verified  
21                         paper ballots required to be used under  
22                         this Act shall be marked or printed on du-  
23                         rable paper.

24                         “(ii) DEFINITION.—For purposes of  
25                         this Act, paper is ‘durable’ if it is capable

1 of withstanding multiple counts and re-  
2 counts by hand without compromising the  
3 fundamental integrity of the ballots, and  
4 capable of retaining the information  
5 marked or printed on them for the full du-  
6 ration of a retention and preservation pe-  
7 riod of 22 months.

8 “(B) READABILITY REQUIREMENTS FOR  
9 PAPER BALLOTS MARKED BY BALLOT MARKING  
10 DEVICE.—All voter-verified paper ballots com-  
11 pleted by the voter through the use of a ballot  
12 marking device shall be clearly readable by the  
13 voter without assistance (other than eyeglasses  
14 or other personal vision enhancing devices) and  
15 by a scanner or other device equipped for indi-  
16 viduals with disabilities.”

17 (b) REQUIRING LABORATORIES TO MEET STAND-  
18 ARDS PROHIBITING CONFLICTS OF INTEREST AS CONDI-  
19 TION OF ACCREDITATION FOR TESTING OF VOTING SYS-  
20 TEM HARDWARE AND SOFTWARE.—

21 (1) IN GENERAL.—Section 231(b) of such Act  
22 (42 U.S.C. 15371(b)) is amended by adding at the  
23 end the following new paragraphs:

24 “(3) PROHIBITING CONFLICTS OF INTEREST;  
25 ENSURING AVAILABILITY OF RESULTS.—

1           “(A) IN GENERAL.—A laboratory may not  
2 be accredited by the Commission for purposes  
3 of this section unless—

4           “(i) the laboratory certifies that the  
5 only compensation it receives for the test-  
6 ing carried out in connection with the cer-  
7 tification, decertification, and recertifi-  
8 cation of the manufacturer’s voting system  
9 hardware and software is the payment  
10 made from the Testing Escrow Account  
11 under paragraph (4);

12           “(ii) the laboratory meets such stand-  
13 ards as the Commission shall establish  
14 (after notice and opportunity for public  
15 comment) to prevent the existence or ap-  
16 pearance of any conflict of interest in the  
17 testing carried out by the laboratory under  
18 this section, including standards to ensure  
19 that the laboratory does not have a finan-  
20 cial interest in the manufacture, sale, and  
21 distribution of voting system hardware and  
22 software, and is sufficiently independent  
23 from other persons with such an interest;

24           “(iii) the laboratory certifies that it  
25 will permit an expert designated by the

1 Commission to observe any testing the lab-  
2 oratory carries out under this section; and

3 “(iv) the laboratory, upon completion  
4 of any testing carried out under this sec-  
5 tion, discloses the test protocols, results,  
6 and all communication between the labora-  
7 tory and the manufacturer to the Commis-  
8 sion.

9 “(B) AVAILABILITY OF RESULTS.—Upon  
10 receipt of information under subparagraph (A),  
11 the Commission shall make the information  
12 available promptly to election officials and the  
13 public.

14 “(4) PROCEDURES FOR CONDUCTING TESTING;  
15 PAYMENT OF USER FEES FOR COMPENSATION OF  
16 ACCREDITED LABORATORIES.—

17 “(A) ESTABLISHMENT OF ESCROW AC-  
18 COUNT.—The Commission shall establish an es-  
19 crow account (to be known as the ‘Testing Es-  
20 crow Account’) for making payments to accred-  
21 ited laboratories for the costs of the testing car-  
22 ried out in connection with the certification, de-  
23 certification, and recertification of voting sys-  
24 tem hardware and software.

1           “(B) SCHEDULE OF FEES.—In consulta-  
2           tion with the accredited laboratories, the Com-  
3           mission shall establish and regularly update a  
4           schedule of fees for the testing carried out in  
5           connection with the certification, decertification,  
6           and recertification of voting system hardware  
7           and software, based on the reasonable costs ex-  
8           pected to be incurred by the accredited labora-  
9           tories in carrying out the testing for various  
10          types of hardware and software.

11          “(C) REQUESTS AND PAYMENTS BY MANU-  
12          FACTURERS.—A manufacturer of voting system  
13          hardware and software may not have the hard-  
14          ware or software tested by an accredited labora-  
15          tory under this section unless—

16                 “(i) the manufacturer submits a de-  
17                 tailed request for the testing to the Com-  
18                 mission; and

19                 “(ii) the manufacturer pays to the  
20                 Commission, for deposit into the Testing  
21                 Escrow Account established under sub-  
22                 paragraph (A), the applicable fee under the  
23                 schedule established and in effect under  
24                 subparagraph (B).



1           “(D) SELECTION OF LABORATORY.—Upon  
2 receiving a request for testing and the payment  
3 from a manufacturer required under subpara-  
4 graph (C), the Commission shall select, from all  
5 laboratories which are accredited under this  
6 section to carry out the specific testing re-  
7 quested by the manufacturer, an accredited lab-  
8 oratory to carry out the testing.

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

20           “(5) DISSEMINATION OF ADDITIONAL INFORMA-  
21 TION ON ACCREDITED LABORATORIES.—

22           “(A) INFORMATION ON TESTING.—Upon  
23 completion of the testing of a voting system  
24 under this section, the Commission shall  
25 promptly disseminate to the public the identi-

1           fication of the laboratory which carried out the  
2           testing.

3           “(B) INFORMATION ON STATUS OF LAB-  
4           ORATORIES.—The Commission shall promptly  
5           notify Congress, the chief State election official  
6           of each State, and the public whenever—

7                   “(i) the Commission revokes, termi-  
8                   nates, or suspends the accreditation of a  
9                   laboratory under this section;

10                   “(ii) the Commission restores the ac-  
11                   creditation of a laboratory under this sec-  
12                   tion which has been revoked, terminated,  
13                   or suspended; or

14                   “(iii) the Commission has credible evi-  
15                   dence of significant security failure at an  
16                   accredited laboratory.”.

17           (2) CONFORMING AMENDMENTS.—Section 231  
18           of such Act (42 U.S.C. 15371) is further amended—

19                   (A) in subsection (a)(1), by striking “test-  
20                   ing, certification,” and all that follows and in-  
21                   serting the following: “testing of voting system  
22                   hardware and software by accredited labora-  
23                   tories in connection with the certification, de-  
24                   certification, and recertification of the hardware  
25                   and software for purposes of this Act.”;

1 (B) in subsection (a)(2), by striking “test-  
2 ing, certification,” and all that follows and in-  
3 serting the following: “testing of its voting sys-  
4 tem hardware and software by the laboratories  
5 accredited by the Commission under this section  
6 in connection with certifying, decertifying, and  
7 recertifying the hardware and software.”;

8 (C) in subsection (b)(1), by striking “test-  
9 ing, certification, decertification, and recertifi-  
10 cation” and inserting “testing”; and

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

14 (3) DEADLINE FOR ESTABLISHMENT OF  
15 STANDARDS, ESCROW ACCOUNT, AND SCHEDULE OF  
16 FEES.—The Election Assistance Commission shall  
17 establish the standards described in section  
18 231(b)(3) of the Help America Vote Act of 2002  
19 and the Testing Escrow Account and schedule of  
20 fees described in section 231(b)(4) of such Act (as  
21 added by paragraph (1)) not later than January 1,  
22 2010.

23 (4) AUTHORIZATION OF APPROPRIATIONS.—  
24 There are authorized to be appropriated to the Elec-  
25 tion Assistance Commission such sums as may be

1 necessary to carry out the Commission’s duties  
2 under paragraphs (3) and (4) of section 231 of the  
3 Help America Vote Act of 2002 (as added by para-  
4 graph (1)).

5 (c) GRANTS FOR RESEARCH ON DEVELOPMENT OF  
6 ELECTION-DEDICATED VOTING SYSTEM SOFTWARE.—

7 (1) IN GENERAL.—Subtitle D of title II of the  
8 Help America Vote Act of 2002 (42 U.S.C. 15401  
9 et seq.) is amended by adding at the end the fol-  
10 lowing new part:

11 **“PART 7—GRANTS FOR RESEARCH ON DEVELOP-**  
12 **MENT OF ELECTION-DEDICATED VOTING**  
13 **SYSTEM SOFTWARE**

14 **“SEC. 297. GRANTS FOR RESEARCH ON DEVELOPMENT OF**  
15 **ELECTION-DEDICATED VOTING SYSTEM**  
16 **SOFTWARE.**

17 “(a) IN GENERAL.—The Director of the National  
18 Science Foundation (hereafter in this part referred to as  
19 the ‘Director’) shall make grants to not fewer than 3 eligi-  
20 ble entities to conduct research on the development of elec-  
21 tion-dedicated voting system software.

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

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

5           “(2) certifications that the entity will use the  
6           funds provided under the grant to carry out research  
7           on how to develop voting systems that run on elec-  
8           tion-dedicated software and that will meet the appli-  
9           cable requirements for voting systems under title III;  
10          and

11          “(3) such other information and certifications  
12          as the Director may require.

13          “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
14          are authorized to be appropriated for grants under this  
15          section \$1,500,000 for each of fiscal years 2010 and 2011,  
16          to remain available until expended.”.

17          (2) CLERICAL AMENDMENT.—The table of con-  
18          tents of such Act is amended by adding at the end  
19          of the items relating to subtitle D of title II the fol-  
20          lowing:

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

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

1 **SEC. 104. AVAILABILITY OF ADDITIONAL FUNDING TO EN-**  
2 **ABLE STATES TO MEET COSTS OF REVISED**  
3 **REQUIREMENTS.**

4 (a) **EXTENSION OF REQUIREMENTS PAYMENTS FOR**  
5 **MEETING REVISED REQUIREMENTS.**—Section 257(a) of  
6 the Help America Vote Act of 2002 (42 U.S.C. 15407(a))  
7 is amended by adding at the end the following new para-  
8 graph:

9 “(4) For fiscal year 2010, \$1,000,000,000, ex-  
10 cept that any funds provided under the authoriza-  
11 tion made by this paragraph shall be used by a  
12 State only to meet the requirements of title III  
13 which are first imposed on the State pursuant to the  
14 amendments made by title I of the Voter Confidence  
15 and Increased Accessibility Act of 2009, or to other-  
16 wise modify or replace its voting systems in response  
17 to such amendments.”.

18 (b) **USE OF REVISED FORMULA FOR ALLOCATION OF**  
19 **FUNDS.**—Section 252(b) of such Act (42 U.S.C.  
20 15402(b)) is amended to read as follows:

21 “(b) **STATE ALLOCATION PERCENTAGE DEFINED.**—

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

1           “(A) the voting age population of the State  
2           (as reported in the most recent decennial cen-  
3           sus); and

4           “(B) the total voting age population of all  
5           States (as reported in the most recent decennial  
6           census).

7           “(2) SPECIAL RULE FOR PAYMENTS USED TO  
8           MEET REQUIREMENTS IMPOSED UNDER VOTER CON-  
9           FIDENCE AND INCREASED ACCESSIBILITY ACT OF  
10          2009.—

11           “(A) IN GENERAL.—In the case of the re-  
12           quirements payment made to a State under the  
13           authorization made by section 257(a)(4) for fis-  
14           cal year 2010 or any fiscal year thereafter, the  
15           ‘State allocation percentage’ for a State is the  
16           amount (expressed as a percentage) equal to  
17           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 2008 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 2008 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 durable paper ballots (as  
23                 described in section 301(a)(2)(A)(i)(I) and  
24                 301(a)(11)(A), as amended or added by



1 the Voter Confidence and Increased Acces-  
2 sibility Act of 2009) for every vote cast.

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

7 (c) REVISED CONDITIONS FOR RECEIPT OF  
8 FUNDS.—Section 253 of such Act (42 U.S.C. 15403) is  
9 amended—

10 (1) in subsection (a), by striking “A State is el-  
11 igible” and inserting “Except as provided in sub-  
12 section (f), a State is eligible”; and

13 (2) by adding at the end the following new sub-  
14 section:

15 “(f) SPECIAL RULE FOR PAYMENTS USED TO MEET  
16 REQUIREMENTS IMPOSED UNDER VOTER CONFIDENCE  
17 AND INCREASED ACCESSIBILITY ACT OF 2009.—

18 “(1) IN GENERAL.—Notwithstanding any other  
19 provision of this part, a State is eligible to receive  
20 a requirements payment under the authorization  
21 made by section 257(a)(4) for fiscal year 2010 or  
22 any fiscal year thereafter if, not later than 90 days  
23 after the date of the enactment of the Voter Con-  
24 fidence and Increased Accessibility Act of 2009, the  
25 chief executive officer of the State, or designee, in

1       consultation and coordination with the chief State  
2       election official—

3               “(A) certifies to the Commission the num-  
4       ber of noncompliant and partially noncompliant  
5       precincts in the State (as defined in section  
6       252(b)(2)); and

7               “(B) files a statement with the Commis-  
8       sion describing the State’s need for the pay-  
9       ment and how the State will use the payment  
10      to meet the requirements of title III (in accord-  
11      ance with the limitations applicable to the use  
12      of the payment under section 257(a)(4)).

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

22              (d) PERMITTING USE OF FUNDS FOR REIMBURSE-  
23      MENT FOR COSTS PREVIOUSLY INCURRED.—Section  
24      251(c)(1) of such Act (42 U.S.C. 15401(c)(1)) is amended  
25      by striking the period at the end and inserting the fol-

1 lowing: “, or as a reimbursement for any costs incurred  
2 after November 2004 in meeting the requirements of title  
3 III which are imposed pursuant to the amendments made  
4 by title I of the Voter Confidence and Increased Accessi-  
5 bility Act of 2009 or in otherwise upgrading or replacing  
6 voting systems in a manner consistent with such amend-  
7 ments (so long as the voting systems meet any of the re-  
8 quirements that apply with respect to elections for Federal  
9 office held in 2012 and each succeeding year).”.

10 (e) RULE OF CONSTRUCTION REGARDING STATES  
11 RECEIVING OTHER FUNDS FOR REPLACING PUNCH  
12 CARD, LEVER, OR OTHER VOTING MACHINES.—Nothing  
13 in the amendments made by this section or in any other  
14 provision of the Help America Vote Act of 2002 may be  
15 construed to prohibit a State which received or was au-  
16 thorized to receive a payment under title I or II of such  
17 Act for replacing punch card, lever, or other voting ma-  
18 chines from receiving or using any funds which are made  
19 available under the amendments made by this section.

20 (f) RULE OF CONSTRUCTION REGARDING USE OF  
21 FUNDS RECEIVED IN PRIOR YEARS.—

22 (1) IN GENERAL.—Nothing contained in this  
23 Act or the Help America Vote Act of 2002 may be  
24 construed to prohibit a State from using funds re-  
25 ceived under title I or II of the Help America Vote

1 Act of 2002 to purchase or acquire by other means  
2 a voting system that meets the requirements of  
3 paragraphs (2) and (3) of section 301 of the Help  
4 America Vote Act of 2002 (as amended by this Act)  
5 in order to replace voting systems purchased with  
6 funds received under the Help America Vote Act of  
7 2002 that do not meet such requirements.

8 (2) WAIVER OF NOTICE AND COMMENT RE-  
9 QUIREMENTS.—The requirements of subparagraphs  
10 (A), (B), and (C) of section 254(a)(11) of the Help  
11 America Vote Act of 2002 shall not apply to any  
12 State using funds received under such Act for the  
13 purposes described in subparagraph (A) or (B) of  
14 paragraph (1).

15 (g) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply with respect to fiscal years begin-  
17 ning with fiscal year 2010.

18 **SEC. 105. EFFECTIVE DATE FOR NEW REQUIREMENTS.**

19 Section 301(d) of the Help America Vote Act of 2002  
20 (42 U.S.C. 15481(d)) is amended to read as follows:

21 “(d) EFFECTIVE DATE.—

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

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

3           “(A) IN GENERAL.—Except as provided in  
4           subparagraph (B), the requirements of this sec-  
5           tion which are first imposed on a State and ju-  
6           risdiction pursuant to the amendments made by  
7           title I of the Voter Confidence and Increased  
8           Accessibility Act of 2009 shall apply with re-  
9           spect to the regularly scheduled general election  
10          for Federal office held in November 2010 and  
11          each succeeding election for Federal office.

12          “(B) DELAY FOR JURISDICTIONS USING  
13          CERTAIN PAPER RECORD PRINTERS OR CERTAIN  
14          SYSTEMS USING OR PRODUCING VOTER-  
15          VERIFIABLE PAPER RECORDS IN 2008.—

16          “(i) DELAY.—In the case of a juris-  
17          diction described in clause (ii), subpara-  
18          graph (A) shall apply to the jurisdiction as  
19          if the reference in such subparagraph to  
20          ‘the regularly scheduled general election  
21          for Federal office held in November 2010  
22          and each succeeding election for Federal  
23          office’ were a reference to ‘elections for  
24          Federal office occurring during 2012 and  
25          each succeeding year’, but only with re-

1           spect to the following requirements of this  
2           section:

3                   “(I) Paragraph (2)(A)(i)(I) of  
4                   subsection (a) (relating to the use of  
5                   voter-marked paper ballots).

6                   “(II) Paragraph (3)(B)(ii)(I) and  
7                   (II) of subsection (a) (relating to ac-  
8                   cess to verification from the durable  
9                   paper ballot).

10                   “(III) Paragraph (11) of sub-  
11                   section (a) (relating to durability and  
12                   readability requirements for ballots).

13                   “(ii) JURISDICTIONS DESCRIBED.—A  
14                   jurisdiction described in this clause is a ju-  
15                   risdiction—

16                           “(I) which used voter verifiable  
17                           paper record printers attached to di-  
18                           rect recording electronic voting ma-  
19                           chines, or which used other voting  
20                           systems that used or produced paper  
21                           records of the vote verifiable by voters  
22                           but that are not in compliance with  
23                           paragraphs (2)(A)(i)(I), (3)(B)(ii)(I)  
24                           and (II), and (11) of subsection (a)  
25                           (as amended or added by the Voter

1 Confidence and Increased Accessibility  
2 Act of 2009), for the administration  
3 of the regularly scheduled general  
4 election for Federal office held in No-  
5 vember 2008; and

6 “(II) which will continue to use  
7 such printers or systems for the ad-  
8 ministration of elections for Federal  
9 office held in years before 2012.

10 “(iii) MANDATORY AVAILABILITY OF  
11 PAPER BALLOTS AT POLLING PLACES  
12 USING GRANDFATHERED PRINTERS AND  
13 SYSTEMS.—

14 “(I) REQUIRING BALLOTS TO BE  
15 OFFERED AND PROVIDED.—The ap-  
16 propriate election official at each poll-  
17 ing place that uses a printer or sys-  
18 tem described in clause (ii)(I) for the  
19 administration of elections for Federal  
20 office shall offer each individual who  
21 is eligible to cast a vote in the election  
22 at the polling place the opportunity to  
23 cast the vote using a blank pre-print-  
24 ed paper ballot which the individual  
25 may mark by hand and which is not

1 produced by the direct recording elec-  
2 tronic voting machine or other system.  
3 The official shall provide the indi-  
4 vidual with the ballot and the supplies  
5 necessary to mark the ballot, and  
6 shall ensure (to the greatest extent  
7 practicable) that the waiting period  
8 for the individual to cast a vote is the  
9 lesser of 30 minutes or the average  
10 waiting period for an individual who  
11 does not agree to cast the vote using  
12 such a paper ballot under this clause.

13 “(II) TREATMENT OF BALLOT.—  
14 Any paper ballot which is cast by an  
15 individual under this clause shall be  
16 counted and otherwise treated as a  
17 regular ballot for all purposes (includ-  
18 ing by incorporating it into the final  
19 unofficial vote count (as defined by  
20 the State) for the precinct) and not as  
21 a provisional ballot, unless the indi-  
22 vidual casting the ballot would have  
23 otherwise been required to cast a pro-  
24 visional ballot.



1                   “(III) POSTING OF NOTICE.—  
2                   The appropriate election official shall  
3                   ensure there is prominently displayed  
4                   at each polling place a notice that de-  
5                   scribes the obligation of the official to  
6                   offer individuals the opportunity to  
7                   cast votes using a pre-printed blank  
8                   paper ballot.

9                   “(IV) TRAINING OF ELECTION  
10                  OFFICIALS.—The chief State election  
11                  official shall ensure that election offi-  
12                  cials at polling places in the State are  
13                  aware of the requirements of this  
14                  clause, including the requirement to  
15                  display a notice under subclause (III),  
16                  and are aware that it is a violation of  
17                  the requirements of this title for an  
18                  election official to fail to offer an indi-  
19                  vidual the opportunity to cast a vote  
20                  using a blank pre-printed paper ballot.

21                  “(V) PERIOD OF APPLICA-  
22                  BILITY.—The requirements of this  
23                  clause apply only during the period in  
24                  which the delay is in effect under  
25                  clause (i).”.

1       **TITLE II—ENHANCEMENT OF**  
2       **ENFORCEMENT**

3       **SEC. 201. ENHANCEMENT OF ENFORCEMENT OF HELP**  
4       **AMERICA VOTE ACT OF 2002.**

5       Section 401 of the Help America Vote Act of 2002  
6 (42 U.S.C. 15511) is amended—

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

10          (2) by adding at the end the following new sub-  
11       sections:

12       “(b) FILING OF COMPLAINTS BY AGGRIEVED PER-  
13       SONS.—

14           “(1) IN GENERAL.—A person who is aggrieved  
15       by a violation of section 301, 302, or 303 which has  
16       occurred, is occurring, or is about to occur may file  
17       a written, signed, notarized complaint with the At-  
18       torney General describing the violation and request-  
19       ing the Attorney General to take appropriate action  
20       under this section. The Attorney General shall im-  
21       mediately provide a copy of a complaint filed under  
22       the previous sentence to the entity responsible for  
23       administering the State-based administrative com-  
24       plaint procedures described in section 402(a) for the  
25       State involved.

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

14       “(c) CLARIFICATION OF AVAILABILITY OF PRIVATE  
15    RIGHT OF ACTION.—Nothing in this section may be con-  
16    strued to prohibit any person from bringing an action  
17    under section 1979 of the Revised Statutes of the United  
18    States (42 U.S.C. 1983) (including any individual who  
19    seeks to enforce the individual’s right to a voter-verified  
20    paper ballot, the right to have the voter-verified paper bal-  
21    lot counted in accordance with this Act, or any other right  
22    under subtitle A of title III) to enforce the uniform and  
23    nondiscriminatory election technology and administration  
24    requirements under sections 301, 302, and 303.

1 “(d) NO EFFECT ON STATE PROCEDURES.—Nothing  
2 in this section may be construed to affect the availability  
3 of the State-based administrative complaint procedures re-  
4 quired under section 402 to any person filing a complaint  
5 under this subsection.”.

6 **TITLE III—REQUIREMENT FOR**  
7 **MANDATORY MANUAL AUDITS**  
8 **BY HAND COUNT**

9 **SEC. 301. MANDATORY MANUAL AUDITS.**

10 Title III of the Help America Vote Act of 2002 (42  
11 U.S.C. 15481 et seq.) is amended by adding at the end  
12 the following new subtitle:

13 **“Subtitle C—Mandatory Manual**  
14 **Audits**

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

16 “(a) REQUIRING AUDITS.—

17 “(1) IN GENERAL.—In accordance with this  
18 subtitle, each State shall administer, without ad-  
19 vance notice to the precincts selected, audits of the  
20 results of all elections for Federal office held in the  
21 State (and, at the option of the State or jurisdiction  
22 involved, of elections for State and local office held  
23 at the same time as such election) consisting of ran-  
24 dom hand counts of the voter-verified paper ballots

1 required to be used and preserved pursuant to sec-  
2 tion 301(a)(2).

3 “(2) EXCEPTION FOR CERTAIN ELECTIONS.—A  
4 State shall not be required to administer an audit of  
5 the results of an election for Federal office under  
6 this subtitle if the winning candidate in the elec-  
7 tion—

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

9 “(B) received 80 percent or more of the  
10 total number of votes cast in the election, as de-  
11 termined on the basis of the final unofficial vote  
12 count.

13 “(b) DETERMINATION OF ENTITY CONDUCTING AU-  
14 DITS; APPLICATION OF GAO INDEPENDENCE STAND-  
15 ARDS.—The State shall administer audits under this sub-  
16 title through an entity selected for such purpose by the  
17 State in accordance with such criteria as the State con-  
18 siders appropriate consistent with the requirements of this  
19 subtitle, except that the entity must meet the general  
20 standards established by the Comptroller General and as  
21 set forth in the Comptroller General’s Government Audit-  
22 ing Standards to ensure the independence (including the  
23 organizational independence) of entities performing finan-  
24 cial audits, attestation engagements, and performance au-  
25 dits.

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

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

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

11           “(1) In the event that the unofficial count as  
12 described in section 323(a)(1) reveals that the mar-  
13 gin of victory between the two candidates receiving  
14 the largest number of votes in the election is less  
15 than 1 percent of the total votes cast in that elec-  
16 tion, the hand counts of the voter-verified paper bal-  
17 lots shall occur in at least 10 percent of all precincts  
18 or equivalent locations (or alternative audit units  
19 used in accordance with the method provided for  
20 under subsection (b)) in the Congressional district  
21 involved (in the case of an election for the House of  
22 Representatives) or the State (in the case of any  
23 other election for Federal office).

24           “(2) In the event that the unofficial count as  
25 described in section 323(a)(1) reveals that the mar-

1       gin of victory between the two candidates receiving  
2       the largest number of votes in the election is greater  
3       than or equal to 1 percent but less than 2 percent  
4       of the total votes cast in that election, the hand  
5       counts of the voter-verified paper ballots shall occur  
6       in at least 5 percent of all precincts or equivalent lo-  
7       cations (or alternative audit units used in accord-  
8       ance with the method provided for under subsection  
9       (b)) in the Congressional district involved (in the  
10      case of an election for the House of Representatives)  
11      or the State (in the case of any other election for  
12      Federal office).

13           “(3) In the event that the unofficial count as  
14      described in section 323(a)(1) reveals that the mar-  
15      gin of victory between the two candidates receiving  
16      the largest number of votes in the election is equal  
17      to or greater than 2 percent of the total votes cast  
18      in that election, the hand counts of the voter-verified  
19      paper ballots shall occur in at least 3 percent of all  
20      precincts or equivalent locations (or alternative audit  
21      units used in accordance with the method provided  
22      for under subsection (b)) in the Congressional dis-  
23      trict involved (in the case of an election for the  
24      House of Representatives) or the State (in the case  
25      of any other election for Federal office).

1 “(b) USE OF ALTERNATIVE MECHANISM.—

2 “(1) PERMITTING USE OF ALTERNATIVE MECH-  
3 ANISM.—Notwithstanding subsection (a), a State  
4 may adopt and apply an alternative mechanism to  
5 determine the number of voter-verified paper ballots  
6 which will be subject to the hand counts required  
7 under this subtitle with respect to an election, so  
8 long as the alternative mechanism uses the voter-  
9 verified paper ballots to conduct the audit and the  
10 National Institute of Standards and Technology de-  
11 termines that the alternative mechanism will be at  
12 least as statistically effective in ensuring the accu-  
13 racy of the election results as the procedure under  
14 this subtitle, in accordance with the principles set  
15 forth in paragraph (2).

16 “(2) PRINCIPLES FOR APPROVAL.—In approv-  
17 ing an alternative mechanism under paragraph (1),  
18 the National Institute of Standards and Technology  
19 shall ensure that such mechanism will provide a  
20 probability of at least 95% that the post-election  
21 audit will detect the minimum amount of margin  
22 error that could cause an incorrect election outcome,  
23 taking into account the possible margin error within  
24 the precinct or other audit unit.



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

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

5 “(1) Within 24 hours after the State announces  
6 the final unofficial vote count (as defined by the  
7 State) in each precinct in the State, the Election  
8 Auditor shall—

9 “(A) determine and then announce the  
10 precincts or equivalent locations (or alternative  
11 audit units used in accordance with the method  
12 provided under section 322(b)) in the State in  
13 which it will administer the audits; and

14 “(B) with respect to votes cast at the pre-  
15 cinct or equivalent location on or before the  
16 date of the election (other than provisional bal-  
17 lots described in paragraph (2)), begin to ad-  
18 minister the hand count of the votes on the  
19 voter-verified paper ballots required to be used  
20 and preserved under section 301(a)(2)(A) and  
21 the comparison of the count of the votes on  
22 those ballots with the final unofficial count of  
23 such votes as announced by the State.

24 “(2) With respect to votes cast other than at  
25 the precinct on the date of the election (other than  
26 votes cast before the date of the election described

1 in paragraph (2)) or votes cast by provisional ballot  
2 on the date of the election which are certified and  
3 counted by the State on or after the date of the elec-  
4 tion, including votes cast by absent uniformed serv-  
5 ices voters and overseas voters under the Uniformed  
6 and Overseas Citizens Absentee Voting Act, the  
7 Election Auditor shall administer the hand count of  
8 the votes on the applicable voter-verified paper bal-  
9 lots required to be produced and preserved under  
10 section 301(a)(2)(A) and the comparison of the  
11 count of the votes on those ballots with the final un-  
12 official count of such votes as announced by the  
13 State.

14 “(b) USE OF PERSONNEL.—In administering the au-  
15 dits, the Election Auditor may utilize the services of the  
16 personnel of the State or jurisdiction, including election  
17 administration personnel and poll workers, without regard  
18 to whether or not the personnel have professional auditing  
19 experience.

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

22 “(1) at the location where the ballots cast in  
23 the election are stored and counted after the date of  
24 the election or such other appropriate and secure lo-  
25 cation agreed upon by the Election Auditor and the

1 individual that is responsible under State law for the  
2 custody of the ballots; and

3 “(2) in the presence of the personnel who under  
4 State law are responsible for the custody of the bal-  
5 lots.

6 “(d) SPECIAL RULE IN CASE OF DELAY IN REPORT-  
7 ING ABSENTEE VOTE COUNT.—In the case of a State in  
8 which the final count of absentee and provisional votes is  
9 not announced until after the expiration of the 7-day pe-  
10 riod which begins on the date of the election, the Election  
11 Auditor shall initiate the process described in subsection  
12 (a) for administering the audit not later than 24 hours  
13 after the State announces the final unofficial vote count  
14 for the votes cast at the precinct or equivalent location  
15 on or before the date of the election, and shall initiate  
16 the administration of the audit of the absentee and provi-  
17 sional votes pursuant to subsection (a)(2) not later than  
18 24 hours after the State announces the final unofficial  
19 count of such votes.

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

21 “(1) IN GENERAL.—If the Election Auditor  
22 finds that any of the hand counts administered  
23 under this section do not match the final unofficial  
24 tally of the results of an election, the Election Audi-  
25 tor shall administer hand counts under this section

1 of such additional precincts (or equivalent jurisdic-  
2 tions) as the Election Auditor considers appropriate  
3 to resolve any concerns resulting from the audit and  
4 ensure the accuracy of the results.

5 “(2) ESTABLISHMENT AND PUBLICATION OF  
6 PROCEDURES GOVERNING ADDITIONAL AUDITS.—  
7 Not later than August 1, 2010, each State shall es-  
8 tablish and publish procedures for carrying out the  
9 additional audits under this subsection, including the  
10 means by which the State shall resolve any concerns  
11 resulting from the audit with finality and ensure the  
12 accuracy of the results.

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

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

17 “(a) IN GENERAL.—Except as provided in subsection  
18 (c), the selection of the precincts in the State in which  
19 the Election Auditor of the State shall administer the  
20 hand counts under this subtitle shall be made by the Elec-  
21 tion Auditor on an entirely random basis in which all pre-  
22 cincts in a Congressional district have an equal chance of  
23 being selected, in accordance with procedures adopted by  
24 the National Institute of Standards and Technology, ex-  
25 cept that at least one precinct shall be selected at random

1 in each county, with additional precincts selected by the  
2 Election Auditor at the Auditor's discretion.

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

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

17 “(d) DEADLINE FOR ADOPTION OF PROCEDURES BY  
18 COMMISSION.—The National Institute of Standards and  
19 Technology shall adopt the procedures described in sub-  
20 section (a) not later than March 31, 2010, and shall pub-  
21 lish them in the Federal Register upon adoption.

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

23 “(a) SUBMISSION TO COMMISSION.—As soon as prac-  
24 ticable after the completion of an audit under this subtitle,  
25 the Election Auditor of a State shall submit to the Com-

1 mission the results of the audit, and shall include in the  
2 submission a comparison of the results of the election in  
3 the precinct as determined by the Election Auditor under  
4 the audit and the final unofficial vote count in the precinct  
5 as announced by the State and all undervotes, overvotes,  
6 blank ballots, and spoiled, voided, or cancelled ballots, as  
7 well as a list of any discrepancies discovered between the  
8 initial, subsequent, and final hand counts administered by  
9 the Election Auditor and such final unofficial vote count  
10 and any explanation for such discrepancies, broken down  
11 by the categories of votes described in paragraphs (1)(B)  
12 and (2) of section 323(a).

13       “(b) PUBLICATION BY COMMISSION.—Immediately  
14 after receiving the submission of the results of an audit  
15 from the Election Auditor of a State under subsection (a),  
16 the Commission shall publicly announce and publish the  
17 information contained in the submission.

18       “(c) DELAY IN CERTIFICATION OF RESULTS BY  
19 STATE.—

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

24                       “(A) to the completion of the audit (and,  
25                       if required, any additional audit conducted

1 under section 323(e)(1)) and the announcement  
2 and submission of the results of each such audit  
3 to the Commission for publication of the infor-  
4 mation required under this section; and

5 “(B) the completion of any procedure es-  
6 tablished by the State pursuant to section  
7 323(e)(2) to resolve discrepancies and ensure  
8 the accuracy of results.

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

21 **“SEC. 326. PAYMENTS TO STATES.**

22 “(a) PAYMENTS FOR COSTS OF CONDUCTING AU-  
23 DITS.—In accordance with the requirements and proce-  
24 dures of this section, the Commission shall make a pay-  
25 ment to a State to cover the costs incurred by the State

1 in carrying out this subtitle with respect to the elections  
2 that are the subject of the audits conducted under this  
3 subtitle.

4 “(b) CERTIFICATION OF COMPLIANCE AND ANTICI-  
5 PATED COSTS.—

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

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

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

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

20 “(2) AMOUNT OF PAYMENT.—The amount of a  
21 payment made to a State under this section shall be  
22 equal to the reasonable costs incurred or the reason-  
23 able costs anticipated to be incurred by the State in  
24 carrying out this subtitle with respect to the elec-



1 tions involved, as set forth in the statement sub-  
2 mitted under paragraph (1).

3 “(3) TIMING OF NOTICE.—The State may not  
4 submit a notice under paragraph (1) until can-  
5 didates have been selected to appear on the ballot  
6 for all of the elections for Federal office which will  
7 be the subject of the audits involved.

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

12 “(d) RECOUPMENT OF OVERPAYMENTS.—No pay-  
13 ment may be made to a State under this section unless  
14 the State agrees to repay to the Commission the excess  
15 (if any) of—

16 “(1) the amount of the payment received by the  
17 State under this section with respect to the elections  
18 involved; over

19 “(2) the actual costs incurred by the State in  
20 carrying out this subtitle with respect to the elec-  
21 tions involved.

22 “(e) AUTHORIZATION OF APPROPRIATIONS.—There  
23 are authorized to be appropriated to the Commission for  
24 fiscal year 2010 and each succeeding fiscal year  
25 \$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 (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 **SEC. 303. GUIDANCE ON BEST PRACTICES FOR ALTER-**  
13 **NATIVE AUDIT MECHANISMS.**

14 (a) IN GENERAL.—Not later than May 1, 2010, the  
15 Director of the National Institute for Standards and Tech-  
16 nology shall establish guidance for States that wish to es-  
17 tablish alternative audit mechanisms under section 322(b)  
18 of the Help America Vote Act of 2002 (as added by section  
19 301). Such guidance shall be based upon scientifically and  
20 statistically reasonable assumptions for the purpose of cre-  
21 ating an alternative audit mechanism that will be at least  
22 as effective in ensuring the accuracy of election results and  
23 as transparent as the procedure under subtitle C of title  
24 III of such Act (as so added).

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated to carry out subsection  
3 (a) \$100,000, to remain available until expended.

4 **SEC. 304. CLERICAL AMENDMENT.**

5 The table of contents of such Act is amended by add-  
6 ing at the end of the items relating to title III the fol-  
7 lowing:

“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 **TITLE IV—REPEAL OF EXEMP-**  
9 **TION OF ELECTION ASSIST-**  
10 **ANCE COMMISSION FROM**  
11 **CERTAIN GOVERNMENT CON-**  
12 **TRACTING REQUIREMENTS**

13 **SEC. 401. REPEAL OF EXEMPTION OF ELECTION ASSIST-**  
14 **ANCE COMMISSION FROM CERTAIN GOVERN-**  
15 **MENT CONTRACTING REQUIREMENTS.**

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

19 (b) EFFECTIVE DATE.—The amendment made by  
20 subsection (a) shall apply with respect to contracts entered

1 into by the Election Assistance Commission on or after  
2 the date of the enactment of this Act.

3       **TITLE V—EFFECTIVE DATE**

4       **SEC. 501. EFFECTIVE DATE.**

5       Except as otherwise provided, this Act and the  
6 amendments made by this Act shall apply with respect to  
7 the regularly scheduled general election for Federal office  
8 in November 2010 and each succeeding election for Fed-  
9 eral office.