

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 811  
OFFERED BY MS. ZOE LOFGREN OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Voter Confidence and  
3 Increased Accessibility Act of 2007”.

**4 SEC. 2. PROMOTING ACCURACY, INTEGRITY, AND SECUR-**  
**5                   RITY THROUGH VOTER-VERIFIED PERMA-**  
**6                   NENT PAPER BALLOT.**

7       (a) BALLOT VERIFICATION AND AUDIT CAPACITY.—

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

11           “(2) BALLOT VERIFICATION AND AUDIT CAPAC-

12           ITY.—

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

14           “(i) VERIFICATION.—(I) The voting  
15           system shall require the use of or produce  
16           an individual, durable, voter-verified paper  
17           ballot of the voter’s vote that shall be cre-  
18           ated by or made available for inspection

1 and verification by the voter before the vot-  
2 er's vote is cast and counted. For purposes  
3 of this subclause, examples of such a ballot  
4 include a paper ballot marked by the voter  
5 for the purpose of being counted by hand  
6 or read by an optical scanner or other  
7 similar device, a paper ballot prepared by  
8 the voter to be mailed to an election offi-  
9 cial (whether from a domestic or overseas  
10 location), a paper ballot created through  
11 the use of a ballot marking device or sys-  
12 tem, or a paper ballot produced by a touch  
13 screen or other electronic voting machine,  
14 so long as in each case the voter is per-  
15 mitted to verify the ballot in a paper form  
16 in accordance with this subparagraph.

17 “(II) The voting system shall provide  
18 the voter with an opportunity to correct  
19 any error made by the system in the voter-  
20 verified paper ballot before the permanent  
21 voter-verified paper ballot is preserved in  
22 accordance with clause (ii).

23 “(III) The voting system shall not  
24 preserve the voter-verified paper ballots in  
25 any manner that makes it possible, at any

1 time after the ballot has been cast, to asso-  
2 ciate a voter with the record of the voter's  
3 vote.

4 “(ii) PRESERVATION.—The individual,  
5 durable voter-verified paper ballot pro-  
6 duced in accordance with clause (i) shall be  
7 used as the official ballot for purposes of  
8 any recount or audit conducted with re-  
9 spect to any election for Federal office in  
10 which the voting system is used, and shall  
11 be preserved—

12 “(I) in the case of votes cast at  
13 the polling place on the date of the  
14 election, within the polling place in  
15 the manner or method in which all  
16 other paper ballots are preserved  
17 within such polling place on such  
18 date; or

19 “(II) in any other case, in a  
20 manner which is consistent with the  
21 manner employed by the jurisdiction  
22 for preserving such ballots in general.

23 “(iii) MANUAL AUDIT CAPACITY.—(I)  
24 Each paper ballot produced pursuant to  
25 clause (i) shall be suitable for a manual

1           audit equivalent to that of a paper ballot  
2           voting system, and shall be counted by  
3           hand in any recount or audit conducted  
4           with respect to any election for Federal of-  
5           fice.

6           “(II) In the event of any inconsist-  
7           encies or irregularities between any elec-  
8           tronic vote tallies and the vote tallies de-  
9           termined by counting by hand the indi-  
10          vidual, durable voter-verified paper ballots  
11          produced pursuant to clause (i), and sub-  
12          ject to subparagraph (B), the individual,  
13          durable voter-verified paper ballots shall be  
14          the true and correct record of the votes  
15          cast.

16          “(B) SPECIAL RULE FOR TREATMENT OF  
17          DISPUTES WHEN PAPER BALLOTS HAVE BEEN  
18          SHOWN TO BE COMPROMISED.—

19                 “(i) IN GENERAL.—In the event  
20                 that—

21                         “(I) there is any inconsistency  
22                         between any electronic vote tallies and  
23                         the vote tallies determined by count-  
24                         ing by hand the individual, durable  
25                         voter-verified paper ballots produced

1                   pursuant to subparagraph (A)(i) with  
2                   respect to any election for Federal of-  
3                   fice; and

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

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

22                  “(ii) RULE FOR CONSIDERATION OF  
23                  BALLOTS ASSOCIATED WITH EACH VOTING  
24                  MACHINE.—For purposes of clause (i), the  
25                  paper ballots associated with each voting

1 system shall be considered on a voting-ma-  
2 chine-by-voting-machine basis, and only the  
3 paper ballots deemed compromised, if any,  
4 shall be considered in the calculation of  
5 whether or not the result of the election  
6 could be changed due to the compromised  
7 paper ballots.”.

8 (2) CONFORMING AMENDMENT CLARIFYING AP-  
9 PPLICABILITY OF ALTERNATIVE LANGUAGE ACCESSI-  
10 BILITY.—Section 301(a)(4) of such Act (42 U.S.C.  
11 15481(a)(4)) is amended by inserting “(including  
12 the paper ballots required to be produced under  
13 paragraph (2) and the notices required under para-  
14 graphs (7) and (13)(B))” after “voting system”.

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

18 (A) in subparagraph (A)(i), by striking  
19 “counted” and inserting “counted, in accord-  
20 ance with paragraphs (2) and (3)”;

21 (B) in subparagraph (A)(ii), by striking  
22 “counted” and inserting “counted, in accord-  
23 ance with paragraphs (2) and (3)”;

24 (C) in subparagraph (A)(iii), by striking  
25 “counted” each place it appears and inserting

1 “counted, in accordance with paragraphs (2)  
2 and (3)”; and

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

6 (b) ACCESSIBILITY AND BALLOT VERIFICATION FOR  
7 INDIVIDUALS WITH DISABILITIES.—

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

11 “(B)(i) satisfy the requirement of subpara-  
12 graph (A) through the use of at least one voting  
13 system equipped for individuals with disabilities  
14 at each polling place; and

15 “(ii) meet the requirements of subpara-  
16 graph (A) and paragraph (2)(A) by using a sys-  
17 tem that—

18 “(I) allows the voter to privately and  
19 independently verify the individual, durable  
20 paper ballot through the conversion of the  
21 human-readable printed or marked vote se-  
22 lections into accessible form,

23 “(II) ensures that the entire process  
24 of ballot verification and vote casting is

1 equipped for individuals with disabilities,  
2 and

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

5 (2) SPECIFIC REQUIREMENT OF STUDY, TEST-  
6 ING, AND DEVELOPMENT OF ACCESSIBLE BALLOT  
7 VERIFICATION MECHANISMS.—

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

11 (i) by redesignating section 247 as  
12 section 248; and

13 (ii) by inserting after section 246 the  
14 following new section:

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

17 “(a) STUDY AND REPORT.—The Director of the Na-  
18 tional Institute of Standards and Technology shall study,  
19 test, and develop best practices to enhance the accessibility  
20 of ballot verification mechanisms for individuals with dis-  
21 abilities, for voters whose primary language is not English,  
22 and for voters with difficulties in literacy, including best  
23 practices for the mechanisms themselves and the processes  
24 through which the mechanisms are used. In carrying out  
25 this section, the Director shall specifically investigate ex-



1 isting and potential methods or devices, including non-  
2 electronic devices, that will assist such individuals and vot-  
3 ers in creating voter-verified paper ballots and presenting  
4 or transmitting the information printed or marked on such  
5 ballots back to such individuals and voters.

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

13 “(c) DEADLINE.—The Director shall complete the re-  
14 quirements of subsection (a) not later than December 31,  
15 2008.

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

19 (B) CLERICAL AMENDMENT.—The table of  
20 contents of such Act is amended—

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

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

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

1           (3) CLARIFICATION OF ACCESSIBILITY STAND-  
2           ARDS UNDER VOLUNTARY VOTING SYSTEM GUID-  
3           ANCE.—In adopting any voluntary guidance under  
4           subtitle B of title III of the Help America Vote Act  
5           with respect to the accessibility of the paper ballot  
6           verification requirements for individuals with disabil-  
7           ities, the Election Assistance Commission shall in-  
8           clude and apply the same accessibility standards ap-  
9           plicable under the voluntary guidance adopted for  
10          accessible voting systems under such subtitle.

11          (c) ADDITIONAL VOTING SYSTEM REQUIREMENTS.—

12           (1) REQUIREMENTS DESCRIBED.—Section  
13          301(a) of such Act (42 U.S.C. 15481(a)) is amend-  
14          ed by adding at the end the following new para-  
15          graphs:

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

18           “(A) IN GENERAL.—The appropriate elec-  
19          tion official at each polling place shall cause to  
20          be placed in a prominent location in the polling  
21          place which is clearly visible from the voting  
22          booths a notice, in large font print accessible to  
23          the visually impaired, advising voters that the  
24          paper ballots representing their votes shall serve  
25          as the vote of record in all audits and recounts

1 in elections for Federal office, and that they  
2 should not leave the voting booth until con-  
3 firming that such paper ballots accurately  
4 record their vote.

5 “(B) SYSTEMS FOR INDIVIDUALS WITH  
6 DISABILITIES.—All voting systems equipped for  
7 individuals with disabilities shall present or  
8 transmit in accessible form the statement re-  
9 ferred to in subparagraph (A), as well as an ex-  
10 planation of the verification process described  
11 in paragraph (3)(B)(ii).

12 “(8) PROHIBITING USE OF UNCERTIFIED ELEC-  
13 TION-DEDICATED VOTING SYSTEM TECHNOLOGIES;  
14 DISCLOSURE REQUIREMENTS.—

15 “(A) IN GENERAL.—A voting system used  
16 in an election for Federal office in a State may  
17 not at any time during the election contain or  
18 use any election-dedicated voting system tech-  
19 nology which has not been certified by the State  
20 for use in the election and which has not been  
21 deposited with an accredited laboratory de-  
22 scribed in section 231 to be held in escrow and  
23 disclosed in accordance with this section.

24 “(B) REQUIREMENT FOR AND RESTRIC-  
25 TIONS ON DISCLOSURE.—An accredited labora-

1 tory under section 231 with whom an election-  
2 dedicated voting system technology has been de-  
3 posited shall—

4 “(i) hold the technology in escrow;  
5 and

6 “(ii) disclose technology and informa-  
7 tion regarding the technology to another  
8 person if—

9 “(I) the person is a qualified per-  
10 son described in subparagraph (C)  
11 who has entered into a nondisclosure  
12 agreement with respect to the tech-  
13 nology which meets the requirements  
14 of subparagraph (D); or

15 “(II) the laboratory is required to  
16 disclose the technology to the person  
17 under State law, in accordance with  
18 the terms and conditions applicable  
19 under such law.

20 “(C) QUALIFIED PERSONS DESCRIBED.—  
21 With respect to the disclosure of election-dedi-  
22 cated voting system technology by a laboratory  
23 under subparagraph (B)(ii)(I), a ‘qualified per-  
24 son’ is any of the following:

1           “(i) A governmental entity with re-  
2           sponsibility for the administration of vot-  
3           ing and election-related matters for pur-  
4           poses of reviewing, analyzing, or reporting  
5           on the technology.

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

18          “(iii) A person not described in clause  
19          (i) or (ii) who reviews, analyzes, or reports  
20          on the technology solely for an academic,  
21          scientific, technological, or other investiga-  
22          tion or inquiry concerning the accuracy or  
23          integrity of the technology.

24          “(D) REQUIREMENTS FOR NONDISCLO-  
25          SURE AGREEMENTS.—A nondisclosure agree-

1           ment entered into with respect to an election-  
2           dedicated voting system technology meets the  
3           requirements of this subparagraph if the agree-  
4           ment—

5                   “(i) is limited in scope to coverage of  
6                   the technology disclosed under subpara-  
7                   graph (B) and any trade secrets and intel-  
8                   lectual property rights related thereto;

9                   “(ii) does not prohibit a signatory  
10                  from entering into other nondisclosure  
11                  agreements to review other technologies  
12                  under this paragraph;

13                  “(iii) exempts from coverage any in-  
14                  formation the signatory lawfully obtained  
15                  from another source or any information in  
16                  the public domain;

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

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

1           “(vi) is silent as to damages awarded  
2           for breach of the agreement, other than a  
3           reference to damages available under appli-  
4           cable law;

5           “(vii) allows disclosure of evidence of  
6           crime, including in response to a subpoena  
7           or warrant;

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

19          “(ix) provides that the agreement  
20          shall be governed by the trade secret laws  
21          of the applicable State.

22          “(E) ELECTION-DEDICATED VOTING SYS-  
23          TEM TECHNOLOGY DEFINED.—For purposes of  
24          this paragraph, ‘election-dedicated voting sys-  
25          tem technology’ means ‘voting system software’

1 as defined under the 2005 voluntary voting sys-  
2 tem guidelines adopted by the Commission  
3 under section 222, but excludes ‘commercial-  
4 off-the-shelf’ software and hardware defined  
5 under those guidelines.

6 “(9) PROHIBITION OF USE OF WIRELESS COM-  
7 MUNICATIONS DEVICES IN VOTING SYSTEMS.—No  
8 voting system shall contain, use, or be accessible by  
9 any wireless, power-line, or concealed communication  
10 device, except that enclosed infrared communications  
11 devices which are certified for use in the voting sys-  
12 tem by the State and which cannot be used for any  
13 remote or wide area communications or used without  
14 the knowledge of poll workers shall be permitted.

15 “(10) PROHIBITING CONNECTION OF SYSTEM  
16 OR TRANSMISSION OF SYSTEM INFORMATION OVER  
17 THE INTERNET.—No component of any voting de-  
18 vice upon which ballots are programmed or votes are  
19 cast or tabulated shall be connected to the Internet  
20 at any time.

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

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



1           tion officials using such system meet the appli-  
2           cable requirements described in subparagraph  
3           (B).

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

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

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

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

24                           “(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 used  
8           under paragraph (13) and the paper bal-  
9           lots provided to voters under paragraph  
10          (14)) shall be marked, printed, or recorded  
11          on durable paper.

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

21          “(B) READABILITY REQUIREMENTS FOR  
22          MACHINE-MARKED OR PRINTED PAPER BAL-  
23          LOTS.—All voter-verified paper ballots com-  
24          pleted by the voter through the use of a mark-  
25          ing or printing device shall be clearly readable

1 by the voter without assistance (other than eye-  
2 glasses or other personal vision enhancing de-  
3 vices) and by a scanner or other device  
4 equipped for individuals with disabilities.

5 “(13) USE OF PAPER BALLOTS IN CASE OF SYS-  
6 TEM OR EQUIPMENT FAILURE.—

7 “(A) IN GENERAL.—In the event of the  
8 failure of voting equipment at a polling place  
9 that causes a delay, any individual who is wait-  
10 ing at the polling place to cast a ballot in an  
11 election for Federal office shall be provided with  
12 a paper ballot for the election and the supplies  
13 necessary to mark the ballot. Any paper ballot  
14 which is cast by an individual under this sub-  
15 paragraph shall be counted and otherwise treat-  
16 ed as a regular ballot in the final unofficial vote  
17 count and certified count and not as a provi-  
18 sional ballot, unless the individual casting the  
19 ballot otherwise would have been required to  
20 cast a provisional ballot if the voting equipment  
21 had not failed.

22 “(B) POSTING OF NOTICE.—The appro-  
23 priate election official shall ensure that at each  
24 polling place a notice is displayed prominently  
25 which describes the right of an individual under

1           this paragraph to be provided with a paper bal-  
2           lot for voting in the election.

3           “(C) TRAINING OF ELECTION OFFI-  
4           CIALS.—The chief State election official shall  
5           ensure that election officials at polling places in  
6           the State are aware of the requirements of this  
7           paragraph, including the requirement to display  
8           a notice under subparagraph (B).

9           “(14) MANDATORY AVAILABILITY OF PAPER  
10          BALLOTS AT POLLING PLACE.—

11          “(A) REQUIRING BALLOTS TO BE OF-  
12          FERED AND PROVIDED.—The appropriate elec-  
13          tion official at each polling place in an election  
14          for Federal office shall offer each individual  
15          who is eligible to cast a vote in the election at  
16          the polling place the opportunity to cast the  
17          vote using a pre-printed paper ballot which the  
18          individual may mark by hand and which is not  
19          produced by a direct recording electronic voting  
20          machine. If the individual accepts the offer to  
21          cast the vote using such a ballot, the official  
22          shall provide the individual with the ballot and  
23          the supplies necessary to mark the ballot, and  
24          shall ensure (to the greatest extent practicable)  
25          that the waiting period for the individual to

1 cast a vote is not greater than the waiting pe-  
2 riod for an individual who does not agree to  
3 cast the vote using such a paper ballot under  
4 this paragraph.

5 “(B) TREATMENT OF BALLOT.—Any paper  
6 ballot which is cast by an individual under this  
7 paragraph shall be counted and otherwise treat-  
8 ed as a regular ballot for all purposes (includ-  
9 ing, to the greatest extent practicable, the dead-  
10 line for counting the ballot) and not as a provi-  
11 sional ballot, unless the individual casting the  
12 ballot would have otherwise been required to  
13 cast a provisional ballot if the individual had  
14 not accepted the offer to cast the vote using a  
15 paper ballot under this paragraph.

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

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

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

9 “(E) EXCEPTIONS.—This paragraph does  
10 not apply with respect to—

11 “(i) a polling place at which each vot-  
12 ing system used in the administration of  
13 an election for Federal office uses only pre-  
14 printed paper ballots which are marked by  
15 hand and which are not produced by a di-  
16 rect recording electronic voting machine  
17 (other than a system used to meet the dis-  
18 ability access requirements of paragraph  
19 (3)); or

20 “(ii) a polling place in operation prior  
21 to the date of the election, but only with  
22 respect to days prior to the date of the  
23 election.

24 “(F) EFFECTIVE DATE.—This paragraph  
25 shall apply with respect to the regularly sched-

1           uled general election for Federal office in No-  
2           vember 2010 and each succeeding election for  
3           Federal office.”.

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

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

11          “(3) PROHIBITING CONFLICTS OF INTEREST;  
12          ENSURING AVAILABILITY OF RESULTS.—

13                   “(A) IN GENERAL.—A laboratory may not  
14          be accredited by the Commission for purposes  
15          of this section unless—

16                           “(i) the laboratory certifies that the  
17                           only compensation it receives for the test-  
18                           ing carried out in connection with the cer-  
19                           tification, decertification, and recertifi-  
20                           cation of the manufacturer’s voting system  
21                           hardware and software is the payment  
22                           made from the Testing Escrow Account  
23                           under paragraph (4);

24                           “(ii) the laboratory meets such stand-  
25                           ards as the Commission shall establish



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

11 “(iii) the laboratory certifies that it  
12 will permit an expert designated by the  
13 Commission to observe any testing the lab-  
14 oratory carries out under this section; and

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

21 “(B) AVAILABILITY OF RESULTS.—Upon  
22 receipt of information under subparagraph (A),  
23 the Commission shall make the information  
24 available promptly to election officials and the  
25 public.

1           “(4) PROCEDURES FOR CONDUCTING TESTING;  
2           PAYMENT OF USER FEES FOR COMPENSATION OF  
3           ACCREDITED LABORATORIES.—

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

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

22          “(C) REQUESTS AND PAYMENTS BY MANU-  
23          FACTURERS.—A manufacturer of voting system  
24          hardware and software may not have the hard-

1           ware or software tested by an accredited labora-  
2           tory under this section unless—

3                   “(i) the manufacturer submits a de-  
4                   tailed request for the testing to the Com-  
5                   mission; and

6                   “(ii) the manufacturer pays to the  
7                   Commission, for deposit into the Testing  
8                   Escrow Account established under sub-  
9                   paragraph (A), the applicable fee under the  
10                  schedule established and in effect under  
11                  subparagraph (B).

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

21                 “(E) PAYMENTS TO LABORATORIES.—  
22                 Upon receiving a certification from a laboratory  
23                 selected to carry out testing pursuant to sub-  
24                 paragraph (D) that the testing is completed,  
25                 along with a copy of the results of the test as

1 required under paragraph (3)(A)(iv), the Com-  
2 mission shall make a payment to the laboratory  
3 from the Testing Escrow Account established  
4 under subparagraph (A) in an amount equal to  
5 the applicable fee paid by the manufacturer  
6 under subparagraph (C)(ii).

7 “(5) DISSEMINATION OF ADDITIONAL INFORMA-  
8 TION ON ACCREDITED LABORATORIES.—

9 “(A) INFORMATION ON TESTING.—Upon  
10 completion of the testing of a voting system  
11 under this section, the Commission shall  
12 promptly disseminate to the public the identi-  
13 fication of the laboratory which carried out the  
14 testing.

15 “(B) INFORMATION ON STATUS OF LAB-  
16 ORATORIES.—The Commission shall promptly  
17 notify Congress, the chief State election official  
18 of each State, and the public whenever—

19 “(i) the Commission revokes, termi-  
20 nates, or suspends the accreditation of a  
21 laboratory under this section;

22 “(ii) the Commission restores the ac-  
23 creditation of a laboratory under this sec-  
24 tion which has been revoked, terminated,  
25 or suspended; or

1           “(iii) the Commission has credible evi-  
2           dence of significant security failure at an  
3           accredited laboratory.”.

4           (B) CONFORMING AMENDMENTS.—Section  
5           231 of such Act (42 U.S.C. 15371) is further  
6           amended—

7           (i) in subsection (a)(1), by striking  
8           “testing, certification,” and all that follows  
9           and inserting the following: “testing of vot-  
10          ing system hardware and software by ac-  
11          credited laboratories in connection with the  
12          certification, decertification, and recertifi-  
13          cation of the hardware and software for  
14          purposes of this Act.”;

15          (ii) in subsection (a)(2), by striking  
16          “testing, certification,” and all that follows  
17          and inserting the following: “testing of its  
18          voting system hardware and software by  
19          the laboratories accredited by the Commis-  
20          sion under this section in connection with  
21          certifying, decertifying, and recertifying  
22          the hardware and software.”;

23          (iii) in subsection (b)(1), by striking  
24          “testing, certification, decertification, and

1           recertification” and inserting “testing”;  
2           and

3                   (iv) in subsection (d), by striking  
4           “testing, certification, decertification, and  
5           recertification” each place it appears and  
6           inserting “testing”.

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

16          (D) AUTHORIZATION OF APPROPRIA-  
17          TIONS.—There are authorized to be appro-  
18          priated to the Election Assistance Commission  
19          such sums as may be necessary to carry out the  
20          Commission’s duties under paragraphs (3) and  
21          (4) of section 231 of the Help America Vote  
22          Act of 2002 (as added by subparagraph (A)).

23          (3) SPECIAL CERTIFICATION OF BALLOT DURA-  
24          BILITY AND READABILITY REQUIREMENTS FOR

1 STATES NOT CURRENTLY USING DURABLE PAPER  
2 BALLOTS.—

3 (A) IN GENERAL.—If any of the voting  
4 systems used in a State for the regularly sched-  
5 uled 2006 general elections for Federal office  
6 did not require the use of or produce durable  
7 paper ballots, the State shall certify to the  
8 Election Assistance Commission not later than  
9 90 days after the date of the enactment of this  
10 Act that the State will be in compliance with  
11 the requirements of sections 301(a)(2),  
12 301(a)(12), and 301(b) of the Help America  
13 Vote of 2002, as added or amended by this sub-  
14 section, in accordance with the deadline estab-  
15 lished under this Act, and shall include in the  
16 certification the methods by which the State  
17 will meet the requirements.

18 (B) CERTIFICATIONS BY STATES THAT RE-  
19 QUIRE CHANGES TO STATE LAW.—In the case  
20 of a State that requires State legislation to  
21 carry out an activity covered by any certifi-  
22 cation submitted under this paragraph, the  
23 State shall be permitted to make the certifi-  
24 cation notwithstanding that the legislation has  
25 not been enacted at the time the certification is

1 submitted and such State shall submit an addi-  
2 tional certification once such legislation is en-  
3 acted.

4 (4) GRANTS FOR RESEARCH ON DEVELOPMENT  
5 OF ELECTION-DEDICATED VOTING SYSTEM SOFT-  
6 WARE.—

7 (A) IN GENERAL.—Subtitle D of title II of  
8 the Help America Vote Act of 2002 (42 U.S.C.  
9 15401 et seq.) is amended by adding at the end  
10 the following 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          part \$1,500,000 for each of fiscal years 2007 and 2008,  
16          to remain available until expended.”.

17                 (B) CLERICAL AMENDMENT.—The table of  
18                 contents of such Act is amended by adding at  
19                 the end of the items relating to subtitle D of  
20                 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 sys-  
tem software.”.

21           (d) AVAILABILITY OF ADDITIONAL FUNDING TO EN-  
22          ABLE STATES TO MEET COSTS OF REVISED REQUIRE-  
23          MENTS.—

1           (1) EXTENSION OF REQUIREMENTS PAYMENTS  
2           FOR MEETING REVISED REQUIREMENTS.—Section  
3           257(a) of the Help America Vote Act of 2002 (42  
4           U.S.C. 15407(a) is amended by adding at the end  
5           the following new paragraph:

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

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

18          “(b) STATE ALLOCATION PERCENTAGE DEFINED.—

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

23                         “(A) the voting age population of the State  
24                         (as reported in the most recent decennial cen-  
25                         sus); and

1           “(B) the total voting age population of all  
2 States (as reported in the most recent decennial  
3 census).

4           “(2) SPECIAL RULE FOR PAYMENTS FOR FIS-  
5 CAL YEAR 2007.—

6           “(A) IN GENERAL.—In the case of the re-  
7 quirements payment made to a State for fiscal  
8 year 2007, the ‘State allocation percentage’ for  
9 a State is the amount (expressed as a percent-  
10 age) equal to the quotient of—

11           “(i) the sum of the number of non-  
12 compliant precincts in the State and 50%  
13 of the number of partially noncompliant  
14 precincts in the State; and

15           “(ii) the sum of the number of non-  
16 compliant precincts in all States and 50%  
17 of the number of partially noncompliant  
18 precincts in all States.

19           “(B) NONCOMPLIANT PRECINCT DE-  
20 FINED.—In this paragraph, a ‘noncompliant  
21 precinct’ means any precinct (or equivalent lo-  
22 cation) within a State for which the voting sys-  
23 tem used to administer the regularly scheduled  
24 general election for Federal office held in No-

1 vember 2006 did not meet either of the require-  
2 ments described in subparagraph (D).

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

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

15 “(i) The primary voting system re-  
16 quired the use of or produced durable  
17 paper ballots (as described in section  
18 301(a)(12)(A)) for every vote cast.

19 “(ii) The voting system provided that  
20 the entire process of paper ballot  
21 verification was equipped for individuals  
22 with disabilities.”.

23 (3) INCREASE IN STATE MINIMUM SHARE OF  
24 PAYMENT.—Section 252(c) of such Act (42 U.S.C.  
25 15402(c)) is amended—

1 (A) in paragraph (1), by inserting after  
2 “one-half of 1 percent” the following: “(or, in  
3 the case of the payment made for fiscal year  
4 2007, 1 percent)”; and

5 (B) in paragraph (2), by inserting after  
6 “one-tenth of 1 percent” the following: “(or, in  
7 the case of the payment made for fiscal year  
8 2007, one-half of 1 percent)”.

9 (4) REVISED CONDITIONS FOR RECEIPT OF  
10 FUNDS.—Section 253 of such Act (42 U.S.C.  
11 15403) is amended—

12 (A) in subsection (a), by striking “A State  
13 is eligible” and inserting “Except as provided in  
14 subsection (f), a State is eligible”; and

15 (B) by adding at the end the following new  
16 subsection:

17 “(f) SPECIAL RULE FOR FISCAL YEAR 2007.—

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

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

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

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

20          (5) PERMITTING USE OF FUNDS FOR REIM-  
21          BURSEMENT FOR COSTS PREVIOUSLY INCURRED.—  
22          Section 251(c)(1) of such Act (42 U.S.C.  
23          15401(c)(1)) is amended by striking the period at  
24          the end and inserting the following: “, or as a reim-  
25          bursement for any costs incurred in meeting the re-

1        requirements of title III which are imposed pursuant  
2        to the amendments made by section 2 of the Voter  
3        Confidence and Increased Accessibility Act of 2007  
4        or in otherwise modifying or replacing voting sys-  
5        tems in response to such amendments.”.

6            (6) 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            (7) EFFECTIVE DATE.—The amendments made  
19        by this subsection shall apply with respect to fiscal  
20        years beginning with fiscal year 2007.

21            (e) EFFECTIVE DATE FOR NEW REQUIREMENTS.—  
22        Section 301(d) of such Act (42 U.S.C. 15481(d)) is  
23        amended to read as follows:

24            “(d) EFFECTIVE DATE.—

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

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

7           “(A) IN GENERAL.—Except as provided in  
8           subparagraph (B), the requirements of this sec-  
9           tion which are first imposed on a State and ju-  
10          risdiction pursuant to the amendments made by  
11          section 2 of the Voter Confidence and Increased  
12          Accessibility Act of 2007 shall apply with re-  
13          spect to the regularly scheduled general election  
14          for Federal office held in November 2008 and  
15          each succeeding election for Federal office.

16          “(B) DELAY FOR JURISDICTIONS USING  
17          CERTAIN PAPER BALLOT PRINTERS OR CERTAIN  
18          PAPER BALLOT-EQUIPPED ACCESSIBLE MA-  
19          CHINES IN 2006.—

20          “(i) DELAY.—In the case of a juris-  
21          diction described in clause (ii), subpara-  
22          graph (A) shall apply to the jurisdiction as  
23          if the reference in such subparagraph to  
24          ‘the regularly scheduled general election  
25          for Federal office held in November 2008



1 and each succeeding election for Federal  
2 office' were a reference to 'elections for  
3 Federal office occurring during 2010 and  
4 each succeeding year', but only with re-  
5 spect to the following requirements of this  
6 section:

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

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

14 “(ii) JURISDICTIONS DESCRIBED.—A  
15 jurisdiction described in this clause is—

16 “(I) a jurisdiction which used  
17 thermal reel-to-reel voter verified  
18 paper ballot printers attached to di-  
19 rect recording electronic voting ma-  
20 chines for the administration of the  
21 regularly scheduled general election  
22 for Federal office held in November  
23 2006 and which will continue to use  
24 such printers attached to such voting  
25 machines for the administration of

1 elections for Federal office held in  
2 2008; or

3 “(II) a jurisdiction which used  
4 voting machines which met the acces-  
5 sibility requirements of paragraph (3)  
6 of subsection (a) (as in effect with re-  
7 spect to such election) for the admin-  
8 istration of the regularly scheduled  
9 general election for Federal office held  
10 in November 2006 and which used or  
11 produced a paper ballot, and which  
12 will continue to use such voting ma-  
13 chines for the administration of elec-  
14 tions for Federal office held in  
15 2008.”.

16 **SEC. 3. ENHANCEMENT OF ENFORCEMENT OF HELP AMER-**  
17 **ICA VOTE ACT OF 2002.**

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

20 (1) by striking “The Attorney General” and in-  
21 sserting “(a) IN GENERAL.—The Attorney General”;  
22 and

23 (2) by adding at the end the following new sub-  
24 sections:

1       “(b) FILING OF COMPLAINTS BY AGGRIEVED PER-  
2       SONS.—

3               “(1) IN GENERAL.—A person who is aggrieved  
4       by a violation of section 301, 302, or 303 which has  
5       occurred, is occurring, or is about to occur may file  
6       a written, signed, notarized complaint with the At-  
7       torney General describing the violation and request-  
8       ing the Attorney General to take appropriate action  
9       under this section.

10              “(2) RESPONSE BY ATTORNEY GENERAL.—The  
11       Attorney General shall respond to each complaint  
12       filed under paragraph (1), in accordance with proce-  
13       dures established by the Attorney General that re-  
14       quire responses and determinations to be made with-  
15       in the same (or shorter) deadlines which apply to a  
16       State under the State-based administrative com-  
17       plaint procedures described in section 402(a)(2).

18              “(c) CLARIFICATION OF AVAILABILITY OF PRIVATE  
19       RIGHT OF ACTION.—Nothing in this section may be con-  
20       strued to prohibit any person from bringing an action  
21       under section 1979 of the Revised Statutes of the United  
22       States (42 U.S.C. 1983) (including any individual who  
23       seeks to enforce the individual’s right to a voter-verified  
24       paper ballot, the right to have the voter-verified paper bal-  
25       lot counted in accordance with this Act, or any other right

1 under subtitle A of title III) to enforce the uniform and  
2 nondiscriminatory election technology and administration  
3 requirements under sections 301, 302, and 303.

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

9 **SEC. 4. REQUIREMENT FOR MANDATORY MANUAL AUDITS**

10 **BY HAND COUNT.**

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

15 **“Subtitle C—Mandatory Manual**  
16 **Audits**

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

18 “(a) REQUIRING AUDITS.—

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

1 dom hand counts of the voter-verified paper ballots  
2 required to be produced and preserved pursuant to  
3 section 301(a)(2).

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

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

10 “(B) received 80% or more of the total  
11 number of votes cast in the election, as deter-  
12 mined on the basis of the final unofficial vote  
13 count.

14 “(b) DETERMINATION OF ENTITY CONDUCTING AU-  
15 DITS; APPLICATION OF GAO INDEPENDENCE STAND-  
16 ARDS.—The State shall administer audits under this sub-  
17 title through an entity selected for such purpose by the  
18 State in accordance with such criteria as the State con-  
19 siders appropriate consistent with the requirements of this  
20 subtitle, except that the entity must meet the general  
21 standards established by the Comptroller General to en-  
22 sure the independence (including the organizational inde-  
23 pendence) of entities performing financial audits, attesta-  
24 tion engagements, and performance audits under generally  
25 accepted government accounting standards.

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.—Notwith-  
2 standing subsection (a), a State may adopt and apply an  
3 alternative mechanism to determine the number of voter-  
4 verified paper ballots which will be subject to the hand  
5 counts required under this subtitle with respect to an elec-  
6 tion, so long as the alternative mechanism uses the voter-  
7 verified paper ballots to conduct the audit and the Na-  
8 tional Institute of Standards and Technology determines  
9 that the alternative mechanism will be at least as statis-  
10 tically effective in ensuring the accuracy of the election  
11 results as the procedure under this subtitle.

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

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

16           “(1) Within 24 hours after the State announces  
17 the final unofficial vote count (as defined by the  
18 State) in each precinct in the State, the Election  
19 Auditor shall determine and then announce the pre-  
20 cincts in the State in which it will administer the au-  
21 dits.

22           “(2) With respect to votes cast at the precinct  
23 or equivalent location on or before the date of the  
24 election (other than provisional ballots described in  
25 paragraph (3)), the Election Auditor shall admin-



1       ister the hand count of the votes on the voter-  
2       verified paper ballots required to be produced and  
3       preserved under section 301(a)(2)(A) and the com-  
4       parison of the count of the votes on those ballots  
5       with the final unofficial count of such votes as an-  
6       nounced by the State.

7               “(3) With respect to votes cast other than at  
8       the precinct on the date of the election (other than  
9       votes cast before the date of the election described  
10      in paragraph (2)) or votes cast by provisional ballot  
11      on the date of the election which are certified and  
12      counted by the State on or after the date of the elec-  
13      tion, including votes cast by absent uniformed serv-  
14      ices voters and overseas voters under the Uniformed  
15      and Overseas Citizens Absentee Voting Act, the  
16      Election Auditor shall administer the hand count of  
17      the votes on the applicable voter-verified paper bal-  
18      lots required to be produced and preserved under  
19      section 301(a)(2)(A) and the comparison of the  
20      count of the votes on those ballots with the final un-  
21      official count of such votes as announced by the  
22      State.

23              “(b) USE OF ELECTION PERSONNEL.—In admin-  
24      istering the audits, the Election Auditor may utilize the  
25      services of election administration personnel of the State

1 or jurisdiction, including poll workers, without regard to  
2 whether or not the personnel have professional auditing  
3 experience.

4 “(c) LOCATION.—The Election Auditor shall admin-  
5 ister an audit of an election at the location where the bal-  
6 lots cast in the election are stored and counted after the  
7 date of the election, and in the presence of those personnel  
8 who under State law are responsible for the custody of  
9 the ballots.

10 “(d) SPECIAL RULE IN CASE OF DELAY IN REPORT-  
11 ING ABSENTEE VOTE COUNT.—In the case of a State in  
12 which the final count of absentee and provisional votes is  
13 not announced until after the expiration of the 7-day pe-  
14 riod which begins on the date of the election, the Election  
15 Auditor shall initiate the process described in subsection  
16 (a) for administering the audit not later than 24 hours  
17 after the State announces the final unofficial vote count  
18 for the votes cast at the precinct or equivalent location  
19 on or before the date of the election, and shall initiate  
20 the administration of the audit of the absentee and provi-  
21 sional votes pursuant to subsection (a)(3) not later than  
22 24 hours after the State announces the final unofficial  
23 count of such votes.

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

1           “(1) IN GENERAL.—If the Election Auditor  
2 finds that any of the hand counts administered  
3 under this section do not match the final unofficial  
4 tally of the results of an election, the Election Audi-  
5 tor shall administer hand counts under this section  
6 of such additional precincts (or equivalent jurisdic-  
7 tions) as the Election Auditor considers appropriate  
8 to resolve any concerns resulting from the audit and  
9 ensure the accuracy of the results.

10           “(2) ESTABLISHMENT AND PUBLICATION OF  
11 PROCEDURES GOVERNING ADDITIONAL AUDITS.—  
12 Not later than August 1, 2008, each State shall es-  
13 tablish and publish procedures for carrying out the  
14 additional audits under this subsection, including the  
15 means by which the State shall resolve any concerns  
16 resulting from the audit with finality and ensure the  
17 accuracy of the results.

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

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

22           “(a) IN GENERAL.—Except as provided in subsection  
23 (c), the selection of the precincts in the State in which  
24 the Election Auditor of the State shall administer the  
25 hand counts under this subtitle shall be made by the Elec-

1 tion Auditor on an entirely random basis using a uniform  
2 distribution in which all precincts in a Congressional dis-  
3 trict have an equal chance of being selected, in accordance  
4 with procedures adopted by the Commission, except that  
5 at least one precinct shall be selected at random in each  
6 county.

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

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

21 “(d) DEADLINE FOR ADOPTION OF PROCEDURES BY  
22 COMMISSION.—The Commission shall adopt the proce-  
23 dures described in subsection (a) not later than March 31,  
24 2008, and shall publish them in the Federal Register upon  
25 adoption.

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

2       “(a) SUBMISSION TO COMMISSION.—As soon as prac-  
3 ticable after the completion of an audit under this subtitle,  
4 the Election Auditor of a State shall submit to the Com-  
5 mission the results of the audit, and shall include in the  
6 submission a comparison of the results of the election in  
7 the precinct as determined by the Election Auditor under  
8 the audit and the final unofficial vote count in the precinct  
9 as announced by the State and all undervotes, overvotes,  
10 blank ballots, and spoiled, voided or cancelled ballots, as  
11 well as a list of any discrepancies discovered between the  
12 initial, subsequent, and final hand counts administered by  
13 the Election Auditor and such final unofficial vote count  
14 and any explanation for such discrepancies, broken down  
15 by the categories of votes described in paragraphs (2) and  
16 (3) of section 323(a).

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

22       “(c) DELAY IN CERTIFICATION OF RESULTS BY  
23 STATE.—

24               “(1) PROHIBITING CERTIFICATION UNTIL COM-  
25 PLETION OF AUDITS.—No State may certify the re-

1       sults of any election which is subject to an audit  
2       under this subtitle prior to—

3               “(A) to the completion of the audit (and,  
4               if required, any additional audit conducted  
5               under section 323(d)(1)) and the announcement  
6               and submission of the results of each such audit  
7               to the Commission for publication of the infor-  
8               mation required under this section; and

9               “(B) the completion of any procedure es-  
10              tablished by the State pursuant to section  
11              323(d)(2) to resolve discrepancies and ensure  
12              the accuracy of results.

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

1 **“SEC. 326. PAYMENTS TO STATES.**

2       “(a) PAYMENTS FOR COSTS OF CONDUCTING AU-  
3 DITS.—In accordance with the requirements and proce-  
4 dures of this section, the Commission shall make a pay-  
5 ment to a State to cover the costs incurred by the State  
6 in carrying out this subtitle with respect to the elections  
7 that are the subject of the audits conducted under this  
8 subtitle.

9       “(b) CERTIFICATION OF COMPLIANCE AND ANTICI-  
10 PATED COSTS.—

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

15           “(A) a certification that the State will con-  
16 duct the audits required under this subtitle in  
17 accordance with all of the requirements of this  
18 subtitle;

19           “(B) a notice of the reasonable costs in-  
20 curred or the reasonable costs anticipated to be  
21 incurred by the State in carrying out this sub-  
22 title with respect to the elections involved; and

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

25       “(2) AMOUNT OF PAYMENT.—The amount of a  
26 payment made to a State under this section shall be

1 equal to the reasonable costs incurred or the reason-  
2 able costs anticipated to be incurred by the State in  
3 carrying out this subtitle with respect to the elec-  
4 tions involved, as set forth in the statement sub-  
5 mitted under paragraph (1).

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

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

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

19 “(1) the amount of the payment received by the  
20 State under this section with respect to the elections  
21 involved; over

22 “(2) the actual costs incurred by the State in  
23 carrying out this subtitle with respect to the elec-  
24 tions involved.



1       “(e) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated to the Commission for  
3 fiscal year 2008 and each succeeding fiscal year  
4 \$100,000,000 for payments under this section.

5       **“SEC. 327. EXCEPTION FOR ELECTIONS SUBJECT TO RE-**  
6                   **COUNT UNDER STATE LAW PRIOR TO CER-**  
7                   **TIFICATION.**

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

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

21           “(2) If the recount would apply to fewer than  
22 100% of the ballots cast in the election—

23                   “(A) the number of ballots counted will be  
24 at least as many as would be counted if an

1           audit were conducted with respect to the elec-  
2           tion in accordance with this subtitle; and

3                   “(B) the selection of the precincts in which  
4           the recount will be conducted will be made in  
5           accordance with the random selection proce-  
6           dures applicable under section 324.

7                   “(3) The recount for the election meets the re-  
8           quirements of section 323(e) (relating to public ob-  
9           serva- tion).

10                   “(4) The State meets the requirements of sec-  
11           tion 325 (relating to the publication of results and  
12           the delay in the certification of results) with respect  
13           to the recount.

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

22           **“SEC. 328. EFFECTIVE DATE.**

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

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

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

8 (2) in subsection (b)(1), by striking “section  
9 303” and inserting “section 303, or subtitle C of  
10 title III,”; and

11 (3) in subsection (c)—

12 (A) by striking “subtitle A” and inserting  
13 “subtitles A or C”, and

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

17 (c) GUIDANCE ON BEST PRACTICES FOR ALTER-  
18 NATIVE AUDIT MECHANISMS.—

19 (1) IN GENERAL.—Not later than May 1, 2008,  
20 the Director of the National Institute for Standards  
21 and Technology shall establish guidance for States  
22 that wish to establish alternative audit mechanisms  
23 under section 322(b) of the Help America Vote Act  
24 of 2002 (as added by subsection (a)). Such guidance  
25 shall be based upon scientifically and statistically

1 reasonable assumptions for the purpose of creating  
2 an alternative audit mechanism that will be at least  
3 as effective in ensuring the accuracy of election re-  
4 sults and as transparent as the procedure under  
5 subtitle C of title III of such Act (as so added).

6 (2) AUTHORIZATION OF APPROPRIATIONS.—  
7 There are authorized to be appropriated to carry out  
8 paragraph (1) \$100,000, to remain available until  
9 expended.

10 (d) CLERICAL AMENDMENT.—The table of contents  
11 of such Act is amended by adding at the end of the item  
12 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.”.

13 **SEC. 5. REPEAL OF EXEMPTION OF ELECTION ASSISTANCE**  
14 **COMMISSION FROM CERTAIN GOVERNMENT**  
15 **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 **SEC. 6. EFFECTIVE DATE.**

4 Except as otherwise provided, this Act and the  
5 amendments made by this Act shall apply with respect to  
6 the regularly scheduled general election for Federal office  
7 in November 2008 and each succeeding election for Fed-  
8 eral office.