

111TH CONGRESS
1ST SESSION

S. 1431

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

IN THE SENATE OF THE UNITED STATES

JULY 9, 2009

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

7 (b) TABLE OF CONTENTS.—The table of contents of
8 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, and
 20 which shall be counted by hand or read by
 21 an optical scanner or other counting de-
 22 vice. For purposes of this subclause, the
 23 term ‘individual, durable, voter-verified,
 24 paper ballot’ means a paper ballot marked
 25 by the voter by hand or a paper ballot

1 marked through the use of a nontabulating
2 ballot marking device or system, so long as
3 the voter shall have the option to mark his
4 or her ballot by hand.

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

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

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

1 “(iii) MANUAL COUNTING REQUIRE-
2 MENTS FOR RECOUNTS AND AUDITS.—(I)
3 Each paper ballot used pursuant to clause
4 (i) shall be suitable for a manual audit,
5 and shall be counted by hand in any re-
6 count or audit conducted with respect to
7 any election for Federal office.

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

17 “(iv) APPLICATION TO ALL BAL-
18 LOTS.—The requirements of this subpara-
19 graph shall apply to all ballots cast in elec-
20 tions for Federal office, including ballots
21 cast by absent uniformed services voters
22 and overseas voters under the Uniformed
23 and Overseas Citizens Absentee Voting Act
24 and other absentee voters.

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

4 “(i) IN GENERAL.—In the event
5 that—

6 “(I) there is any inconsistency
7 between any electronic vote tallies and
8 the vote tallies determined by count-
9 ing by hand the individual, durable,
10 voter-verified, paper ballots used pur-
11 suant to subparagraph (A)(i) with re-
12 spect to any election for Federal of-
13 fice; and

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

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

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

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

21 (c) OTHER CONFORMING AMENDMENTS.—Section
22 301(a)(1) of such Act (42 U.S.C. 15481(a)(1)) is amend-
23 ed—

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

4 (2) in subparagraph (A)(ii), by striking “count-
5 ed” and inserting “counted, in accordance with
6 paragraphs (2) and (3)”;

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

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

13 **SEC. 102. ACCESSIBILITY AND BALLOT VERIFICATION FOR**
14 **INDIVIDUALS WITH DISABILITIES.**

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

18 “(B)(i) satisfy the requirement of subpara-
19 graph (A) through the use of at least one voting
20 system equipped for individuals with disabili-
21 ties, including nonvisual and enhanced visual
22 accessibility for the blind and visually impaired,
23 and nonmanual and enhanced manual accessi-
24 bility for the mobility and dexterity impaired, at
25 each polling place; and

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

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

11 “(II) allows the voter to privately and
12 independently verify and cast the perma-
13 nent paper ballot without requiring the
14 voter to manually handle the paper ballot;
15 and”.

16 (b) SPECIFIC REQUIREMENT OF STUDY, TESTING,
17 AND DEVELOPMENT OF ACCESSIBLE PAPER BALLOT
18 VERIFICATION MECHANISMS.—

19 (1) STUDY AND REPORTING.—Subtitle C of
20 title II of such Act (42 U.S.C. 15381 et seq.) is
21 amended—

22 (A) by redesignating section 247 as section
23 248; and

24 (B) by inserting after section 246 the fol-
25 lowing new section:

1 **“SEC. 247. STUDY AND REPORT ON ACCESSIBLE PAPER**
2 **BALLOT VERIFICATION MECHANISMS.**

3 “(a) **STUDY AND REPORT.**—The Director of the Na-
4 tional Science Foundation shall make grants to not fewer
5 than 3 eligible entities to study, test, and develop acces-
6 sible paper ballot voting, verification, and casting mecha-
7 nisms and devices and best practices to enhance the acces-
8 sibility of paper ballot voting and verification mechanisms
9 for individuals with disabilities, for voters whose primary
10 language is not English, and for voters with difficulties
11 in literacy, including best practices for the mechanisms
12 themselves and the processes through which the mecha-
13 nisms are used.

14 “(b) **ELIGIBILITY.**—An entity is eligible to receive a
15 grant under this part if it submits to the Director (at such
16 time and in such form as the Director may require) an
17 application containing—

18 “(1) certifications that the entity shall specifi-
19 cally investigate enhanced methods or devices, in-
20 cluding non-electronic devices, that will assist such
21 individuals and voters in marking voter-verified
22 paper ballots and presenting or transmitting the in-
23 formation printed or marked on such ballots back to
24 such individuals and voters, and casting such ballots;

1 “(2) a certification that the entity shall com-
2 plete the activities carried out with the grant not
3 later than December 31, 2011; and

4 “(3) such other information and certifications
5 as the Director may require.

6 “(c) AVAILABILITY OF TECHNOLOGY.—Any tech-
7 nology developed with the grants made under this section
8 shall be treated as non-proprietary and shall be made
9 available to the public, including to manufacturers of vot-
10 ing systems.

11 “(d) COORDINATION WITH GRANTS FOR TECH-
12 NOLOGY IMPROVEMENTS.—The Director shall carry out
13 this section so that the activities carried out with the
14 grants made under subsection (a) are coordinated with the
15 research conducted under the grant program carried out
16 by the Commission under section 271, to the extent that
17 the Director and Commission determine necessary to pro-
18 vide for the advancement of accessible voting technology.

19 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated to carry out subsection
21 (a) \$5,000,000, to remain available until expended.”.

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

24 (A) by redesignating the item relating to
25 section 247 as relating to section 248; and

1 (B) by inserting after the item relating to
2 section 246 the following new item:

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

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

12 (d) PERMITTING USE OF FUNDS FOR PROTECTION
13 AND ADVOCACY SYSTEMS TO SUPPORT ACTIONS TO EN-
14 FORCE ELECTION-RELATED DISABILITY ACCESS.—Sec-
15 tion 292(a) of the Help America Vote Act of 2002 (42
16 U.S.C. 15462(a)) is amended by striking “; except that”
17 and all that follows and inserting a period.

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

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

1 “(7) PROHIBITING USE OF UNCERTIFIED ELEC-
2 TION-DEDICATED VOTING SYSTEM TECHNOLOGIES;
3 DISCLOSURE REQUIREMENTS.—

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

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

11 “(ii) which has not been deposited
12 with an accredited laboratory described in
13 section 231 to be held in escrow and dis-
14 closed in accordance with this section.

15 “(B) REQUIREMENT FOR DISCLOSURE AND
16 LIMITATION ON RESTRICTING DISCLOSURE.—
17 An accredited laboratory under section 231
18 with whom an election-dedicated voting system
19 technology has been deposited shall—

20 “(i) hold the technology in escrow;
21 and

22 “(ii) disclose technology and informa-
23 tion regarding the technology to another
24 person if—

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

7 “(II) the laboratory is permitted
8 or required to disclose the technology
9 to the person under State law, in ac-
10 cordance with the terms and condi-
11 tions applicable under such law.

12 “(C) QUALIFIED PERSONS DESCRIBED.—

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

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

22 “(ii) A party to pre- or post-election
23 litigation challenging the result of an elec-
24 tion or the administration or use of the
25 technology used in an election, including

1 but not limited to election contests or chal-
2 lenges to the certification of the tech-
3 nology, or an expert for a party to such
4 litigation, for purposes of reviewing or ana-
5 lyzing the technology to support or oppose
6 the litigation, and all parties to the litiga-
7 tion shall have access to the technology for
8 such purposes.

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

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

21 “(i) is limited in scope to coverage of
22 the technology disclosed under subpara-
23 graph (B) and any trade secrets and intel-
24 lectual property rights related thereto;

1 “(ii) does not prohibit a signatory
2 from entering into other nondisclosure
3 agreements to review other technologies
4 under this paragraph;

5 “(iii) exempts from coverage any in-
6 formation the signatory lawfully obtained
7 from another source or any information in
8 the public domain;

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

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

18 “(vi) is silent as to damages awarded
19 for breach of the agreement, other than a
20 reference to damages available under appli-
21 cable law;

22 “(vii) allows disclosure of evidence of
23 crime, including in response to a subpoena
24 or warrant;

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

12 “(ix) provides that the agreement
13 shall be governed by the trade secret laws
14 of the applicable State.

15 “(E) ELECTION-DEDICATED VOTING SYS-
16 TEM TECHNOLOGY DEFINED.—For purposes of
17 this paragraph:

18 “(i) IN GENERAL.—The term ‘elec-
19 tion-dedicated voting system technology’
20 means the following:

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

23 “(II) A complete disk image of
24 the pre-build, build environment, and

1 any file signatures to validate that it
2 is unmodified.

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

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

11 “(V) Installation devices and
12 software file signatures.

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

18 “(8) PROHIBITION OF USE OF WIRELESS COM-
19 MUNICATIONS DEVICES IN SYSTEMS OR DEVICES.—
20 No system or device upon which ballots are pro-
21 grammed or votes are cast or tabulated shall con-
22 tain, use, or be accessible by any wireless, power-
23 line, or concealed communication device, except that
24 enclosed infrared communications devices which are
25 certified for use in such device by the State and

1 which cannot be used for any remote or wide area
2 communications or used without the knowledge of
3 poll workers shall be permitted.

4 “(9) PROHIBITING CONNECTION OF SYSTEM TO
5 THE INTERNET.—

6 “(A) IN GENERAL.—No system or device
7 upon which ballots are programmed or votes are
8 cast or tabulated shall be connected to the
9 Internet at any time.

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

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

18 “(A) IN GENERAL.—No voting system may
19 be used in an election for Federal office unless
20 the manufacturer of such system and the elec-
21 tion officials using such system meet the appli-
22 cable requirements described in subparagraph
23 (B).

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

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

12 “(ii) The manufacturer shall disclose
13 to an accredited laboratory under section
14 231 and to the appropriate election official
15 any information required to be disclosed
16 under paragraph (7).

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

21 “(I) alter such software; or

22 “(II) insert or use in the voting
23 system any software, software patch,
24 or other software modification not cer-

1 tified by the State for use in the elec-
2 tion.

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

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

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

14 “(C) DEVELOPMENT AND PUBLICATION OF
15 BEST PRACTICES OF SECURE CHAIN OF CUS-
16 TODY.—Not later than August 1, 2010, the
17 Commission shall develop and make publicly
18 available best practices regarding the require-
19 ment of subparagraph (B)(i) and (B)(iii), and
20 in the case of subparagraph (B)(iii), shall in-
21 clude best practices for certifying software
22 patches and minor software modifications under
23 short deadlines.

24 “(D) DISCLOSURE OF SECURE CHAIN OF
25 CUSTODY.—The Commission shall make infor-

1 mation provided to the Commission under sub-
2 paragraph (B)(i) available to any person upon
3 request.

4 “(11) DURABILITY AND READABILITY REQUIRE-
5 MENTS FOR BALLOTS.—

6 “(A) DURABILITY REQUIREMENTS FOR
7 PAPER BALLOTS.—

8 “(i) IN GENERAL.—All voter-verified
9 paper ballots required to be used under
10 this Act shall be marked or printed on du-
11 rable 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 or printed on them for the full du-
19 ration of a retention and preservation pe-
20 riod of 22 months.

21 “(B) READABILITY REQUIREMENTS FOR
22 PAPER BALLOTS MARKED BY BALLOT MARKING
23 DEVICE.—All voter-verified paper ballots com-
24 pleted by the voter through the use of a ballot
25 marking device shall be clearly readable by the

1 voter without assistance (other than eyeglasses
 2 or other personal vision enhancing devices) and
 3 by a scanner or other device equipped for indi-
 4 viduals with disabilities.”.

5 (b) REQUIRING LABORATORIES TO MEET STAND-
 6 ARDS PROHIBITING CONFLICTS OF INTEREST AS CONDI-
 7 TION OF ACCREDITATION FOR TESTING OF VOTING SYS-
 8 TEM HARDWARE AND SOFTWARE.—

9 (1) IN GENERAL.—Section 231(b) of such Act
 10 (42 U.S.C. 15371(b)) is amended by adding at the
 11 end the following new paragraphs:

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

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

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

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

13 “(iii) the laboratory certifies that it
14 will permit an expert designated by the
15 Commission or by the State requiring cer-
16 tification of the system being tested to ob-
17 serve any testing the laboratory carries out
18 under this section; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (A) in subsection (a)(1), by striking “test-
14 ing, certification,” and all that follows and in-
15 serting the following: “testing of voting system
16 hardware and software by accredited labora-
17 tories in connection with the certification, de-
18 certification, and recertification of the hardware
19 and software for purposes of this Act.”;

20 (B) in subsection (a)(2), by striking “test-
21 ing, certification,” and all that follows and in-
22 serting the following: “testing of its voting sys-
23 tem hardware and software by the laboratories
24 accredited by the Commission under this section

1 in connection with certifying, decertifying, and
2 recertifying the hardware and software.”;

3 (C) in subsection (b)(1), by striking “test-
4 ing, certification, decertification, and recertifi-
5 cation” and inserting “testing”; and

6 (D) in subsection (d), by striking “testing,
7 certification, decertification, and recertification”
8 each place it appears and inserting “testing”.

9 (3) DEADLINE FOR ESTABLISHMENT OF
10 STANDARDS, ESCROW ACCOUNT, AND SCHEDULE OF
11 FEES.—The Election Assistance Commission shall
12 establish the standards described in section
13 231(b)(3) of the Help America Vote Act of 2002
14 and the Testing Escrow Account and schedule of
15 fees described in section 231(b)(4) of such Act (as
16 added by paragraph (1)) not later than January 1,
17 2010.

18 (4) AUTHORIZATION OF APPROPRIATIONS.—
19 There are authorized to be appropriated to the Elec-
20 tion Assistance Commission such sums as may be
21 necessary to carry out the Commission’s duties
22 under paragraphs (3) and (4) of section 231 of the
23 Help America Vote Act of 2002 (as added by para-
24 graph (1)).

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

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

7 **“PART 7—GRANTS FOR RESEARCH ON DEVELOP-**
8 **MENT OF ELECTION-DEDICATED VOTING**
9 **SYSTEM SOFTWARE**

10 **“SEC. 297. GRANTS FOR RESEARCH ON DEVELOPMENT OF**
11 **ELECTION-DEDICATED VOTING SYSTEM**
12 **SOFTWARE.**

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

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

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

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

7 “(3) such other information and certifications
 8 as the Director may require.

9 “(c) AVAILABILITY OF TECHNOLOGY.—Any tech-
 10 nology developed with the grants made under this section
 11 shall be treated as non-proprietary and shall be made
 12 available to the public, including to manufacturers of vot-
 13 ing systems.

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

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

10 “(A) \$1,000,000,000, except that any
11 funds provided under the authorization made by
12 this subparagraph shall be used by a State only
13 to meet the requirements of title III which are
14 first imposed on the State pursuant to the
15 amendments made by title I of the Voter Con-
16 fidence and Increased Accessibility Act of 2009,
17 or to otherwise modify or replace its voting sys-
18 tems in response to such amendments; plus

19 “(B) such sums as may be necessary to en-
20 able States to carry out the activities described
21 in subparagraph (A) with respect to require-
22 ments which first apply to the regularly sched-
23 uled general election for Federal office held in
24 November 2014, except that any funds provided
25 under the authorization made by this subpara-

1 graph shall be used by a State only for carrying
2 out these activities.”.

3 (b) USE OF REVISED FORMULA FOR ALLOCATION OF
4 FUNDS.—Section 252(b) of such Act (42 U.S.C.
5 15402(b)) is amended to read as follows:

6 “(b) STATE ALLOCATION PERCENTAGE DEFINED.—

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

11 “(A) the voting age population of the State
12 (as reported in the most recent decennial cen-
13 sus); and

14 “(B) the total voting age population of all
15 States (as reported in the most recent decennial
16 census).

17 “(2) SPECIAL RULE FOR PAYMENTS USED TO
18 MEET REQUIREMENTS IMPOSED UNDER VOTER CON-
19 FIDENCE AND INCREASED ACCESSIBILITY ACT OF
20 2009.—

21 “(A) IN GENERAL.—In the case of the re-
22 quirements payment made to a State under the
23 authorization made by section 257(a)(4) for fis-
24 cal year 2010 or any fiscal year thereafter, the
25 ‘State allocation percentage’ for a State is the

1 amount (expressed as a percentage) equal to
2 the quotient of—

3 “(i) the sum of the number of non-
4 compliant precincts in the State and 50
5 percent of the number of partially non-
6 compliant precincts in the State; and

7 “(ii) the sum of the number of non-
8 compliant precincts in all States and 50
9 percent of the number of partially non-
10 compliant precincts in all States.

11 “(B) NONCOMPLIANT PRECINCT DE-
12 FINED.—In this paragraph, a ‘noncompliant
13 precinct’ means any precinct (or equivalent lo-
14 cation) within a State for which the voting sys-
15 tem used to administer the regularly scheduled
16 general election for Federal office held in No-
17 vember 2008 did not meet either of the require-
18 ments described in subparagraph (D).

19 “(C) PARTIALLY NONCOMPLIANT PRE-
20 CINCT DEFINED.—In this paragraph, a ‘par-
21 tially noncompliant precinct’ means any pre-
22 cinct (or equivalent location) within a State for
23 which the voting system used to administer the
24 regularly scheduled general election for Federal
25 office held in November 2008 met only one of

1 the requirements described in subparagraph
2 (D).

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

6 “(i) The primary voting system re-
7 quired the use of durable paper ballots (as
8 described in section 301(a)(2)(A)(i)(I) and
9 301(a)(11)(A), as amended or added by
10 the Voter Confidence and Increased Acces-
11 sibility Act of 2009) for every vote cast.

12 “(ii) The voting system allowed the
13 voter to privately and independently verify
14 the permanent paper ballot through the
15 presentation of the same printed or
16 marked information used for vote counting
17 and auditing and to privately and inde-
18 pendently cast the permanent paper ballot
19 without handling the ballot manually.”.

20 (c) REVISED CONDITIONS FOR RECEIPT OF
21 FUNDS.—Section 253 of such Act (42 U.S.C. 15403) is
22 amended—

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

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

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

6 “(1) IN GENERAL.—Notwithstanding any other
7 provision of this part, a State is eligible to receive
8 a requirements payment under the authorization
9 made by section 257(a)(4) for fiscal year 2010 or
10 any fiscal year thereafter if, not later than 90 days
11 after the date of the enactment of the Voter Con-
12 fidence and Increased Accessibility Act of 2009, the
13 chief executive officer of the State, or designee, in
14 consultation and coordination with the chief State
15 election official—

16 “(A) certifies to the Commission the num-
17 ber of noncompliant and partially noncompliant
18 precincts in the State (as defined in section
19 252(b)(2));

20 “(B) certifies to the Commission that the
21 State will reimburse each unit of local govern-
22 ment in the State for any costs the unit incurs
23 in carrying out the activities for which the pay-
24 ment may be used; and

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

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

16 (d) PERMITTING USE OF FUNDS FOR REIMBURSE-
17 MENT FOR COSTS PREVIOUSLY INCURRED.—Section
18 251(e)(1) of such Act (42 U.S.C. 15401(e)(1)) is amended
19 by striking the period at the end and inserting the fol-
20 lowing: “, or as a reimbursement for any costs incurred
21 after November 2004 in meeting the requirements of title
22 III which are imposed pursuant to the amendments made
23 by title I of the Voter Confidence and Increased Accessi-
24 bility Act of 2009 or in otherwise upgrading or replacing
25 voting systems in a manner consistent with such amend-

1 ments (so long as the voting systems meet any of the re-
2 quirements that apply with respect to elections for Federal
3 office held in 2014 and each succeeding year).”.

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

14 (f) RULE OF CONSTRUCTION REGARDING USE OF
15 FUNDS RECEIVED IN PRIOR YEARS.—

16 (1) IN GENERAL.—Nothing contained in this
17 Act or the Help America Vote Act of 2002 may be
18 construed to prohibit a State from using funds re-
19 ceived under title I or II of the Help America Vote
20 Act of 2002 to purchase or acquire by other means
21 a voting system that meets the requirements of
22 paragraphs (2) and (3) of section 301 of the Help
23 America Vote Act of 2002 (as amended by this Act)
24 in order to replace voting systems purchased with

1 funds received under the Help America Vote Act of
2 2002 that do not meet such requirements.

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

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

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

14 Section 301(d) of the Help America Vote Act of 2002
15 (42 U.S.C. 15481(d)) is amended to read as follows:

16 “(d) EFFECTIVE DATE.—

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

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

23 “(A) IN GENERAL.—Except as provided in
24 subparagraphs (B) and (C), the requirements of
25 this section which are first imposed on a State

1 and jurisdiction pursuant to the amendments
2 made by title I of the Voter Confidence and In-
3 creased Accessibility Act of 2009 shall apply
4 with respect to voting systems used for the reg-
5 ularly scheduled general election for Federal of-
6 fice held in November 2010 and each suc-
7 ceeding election for Federal office.

8 “(B) DELAY FOR JURISDICTIONS USING
9 CERTAIN PAPER RECORD PRINTERS OR CERTAIN
10 SYSTEMS USING OR PRODUCING VOTER-
11 VERIFIABLE PAPER RECORDS IN 2008.—

12 “(i) DELAY.—In the case of a juris-
13 diction described in clause (ii), subpara-
14 graph (A) shall apply to a voting system in
15 the jurisdiction as if the reference in such
16 subparagraph to ‘the regularly scheduled
17 general election for Federal office held in
18 November 2010 and each succeeding elec-
19 tion for Federal office’ were a reference to
20 ‘elections for Federal office occurring dur-
21 ing 2014 and each succeeding year’, but
22 only with respect to the following require-
23 ments of this section:

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

4 “(II) Paragraph (3)(B)(ii) (I)
5 and (II) of subsection (a) (relating to
6 access to verification from and casting
7 of the durable paper ballot).

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

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

14 “(I) which used voter verifiable
15 paper record printers attached to di-
16 rect recording electronic voting ma-
17 chines, or which used other voting
18 systems that used or produced paper
19 records of the vote verifiable by voters
20 but that are not in compliance with
21 paragraphs (2)(A)(i)(I), (3)(B)(ii) (I)
22 and (II), and (11) of subsection (a)
23 (as amended or added by the Voter
24 Confidence and Increased Accessibility
25 Act of 2009), for the administration

1 of the regularly scheduled general
2 election for Federal office held in No-
3 vember 2008; and

4 “(II) which will continue to use
5 such printers or systems for the ad-
6 ministration of elections for Federal
7 office held in years before 2014.

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

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

1 system. The official shall provide the
2 individual with the ballot and the sup-
3 plies necessary to mark the ballot, and
4 shall ensure (to the greatest extent
5 practicable) that the waiting period
6 for the individual to cast a vote is the
7 lesser of 30 minutes or the average
8 waiting period for an individual who
9 does not agree to cast the vote using
10 such a paper ballot under this clause.

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

23 “(III) POSTING OF NOTICE.—
24 The appropriate election official shall
25 ensure there is prominently displayed

1 at each polling place a notice that de-
2 scribes the obligation of the official to
3 offer individuals the opportunity to
4 cast votes using a pre-printed blank
5 paper ballot.

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

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

23 “(C) SPECIAL RULE FOR JURISDICTIONS
24 USING CERTAIN NONTABULATING BALLOT
25 MARKING DEVICES.—In the case of a jurisdic-

1 tion which uses a nontabulating ballot marking
 2 device which automatically deposits the ballot
 3 into a privacy sleeve, subparagraph (A) shall
 4 apply to a voting system in the jurisdiction as
 5 if the reference in such subparagraph to ‘the
 6 regularly scheduled general election for Federal
 7 office held in November 2010 and each suc-
 8 ceeding election for Federal office’ were a ref-
 9 erence to ‘elections for Federal office occurring
 10 during 2014 and each succeeding year’, but
 11 only with respect to paragraph (3)(B)(ii)(II) of
 12 subsection (a) (relating to nonmanual casting of
 13 the durable paper ballot).’.

14 **TITLE II—ENHANCEMENT OF**
 15 **ENFORCEMENT**

16 **SEC. 201. ENHANCEMENT OF ENFORCEMENT OF HELP**
 17 **AMERICA VOTE ACT OF 2002.**

18 Section 401 of the Help America Vote Act of 2002
 19 (42 U.S.C. 15511) is amended—

20 (1) by striking “The Attorney General” and in-
 21 serting “(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. The Attorney General shall im-
10 mediately provide a copy of a complaint filed under
11 the previous sentence to the entity responsible for
12 administering the State-based administrative com-
13 plaint procedures described in section 402(a) for the
14 State involved.

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

1 State-based administrative complaint procedures de-
 2 scribed in section 402(a) for the State involved.

3 “(c) AVAILABILITY OF PRIVATE RIGHT OF AC-
 4 TION.—Any person who is authorized to file a complaint
 5 under subsection (b)(1) (including any individual who
 6 seeks to enforce the individual’s right to a voter-verified
 7 paper ballot, the right to have the voter-verified paper bal-
 8 lot counted in accordance with this Act, or any other right
 9 under subtitle A of title III) may file an action under sec-
 10 tion 1979 of the Revised Statutes of the United States
 11 (42 U.S.C. 1983) to enforce the uniform and nondiscrim-
 12 inatory election technology and administration require-
 13 ments under sections 301, 302, and 303.

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

19 **TITLE III—REQUIREMENT FOR**
 20 **MANDATORY MANUAL AUDITS**
 21 **BY HAND COUNT**

22 **SEC. 301. MANDATORY MANUAL AUDITS.**

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

1 **“Subtitle C—Mandatory Manual**
2 **Audits**

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

4 “(a) REQUIRING AUDITS.—

5 “(1) IN GENERAL.—In accordance with this
6 subtitle, each State shall administer, without ad-
7 vance notice to the precincts or alternative audit
8 units selected, audits of the results of all elections
9 for Federal office held in the State (and, at the op-
10 tion of the State or jurisdiction involved, of elections
11 for State and local office held at the same time as
12 such election) consisting of random hand counts of
13 the voter-verified paper ballots required to be used
14 and preserved pursuant to section 301(a)(2).

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

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

21 “(B) received 80 percent or more of the
22 total number of votes cast in the election, as de-
23 termined on the basis of the final unofficial vote
24 count.

1 “(b) DETERMINATION OF ENTITY CONDUCTING AU-
 2 DITS; APPLICATION OF GAO INDEPENDENCE STAND-
 3 ARDS.—The State shall administer audits under this sub-
 4 title through an entity selected for such purpose by the
 5 State in accordance with such criteria as the State con-
 6 siders appropriate consistent with the requirements of this
 7 subtitle, except that the entity must meet the general
 8 standards established by the Comptroller General and as
 9 set forth in the Comptroller General’s Government Audit-
 10 ing Standards to ensure the independence (including, ex-
 11 cept as provided under section 323(b), the organizational
 12 independence) of entities performing financial audits, at-
 13 testation engagements, and performance audits.

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

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

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

24 “(1) 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 less
3 than 1 percent of the total votes cast in that elec-
4 tion, the hand counts of the voter-verified paper bal-
5 lots shall occur in at least 10 percent of all precincts
6 or equivalent locations (or alternative audit units
7 used in accordance with the method provided for
8 under subsection (b)) in the Congressional district
9 involved (in the case of an election for the House of
10 Representatives) or the State (in the case of any
11 other election for Federal office).

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

1 “(3) In the event that the unofficial count as
2 described in section 323(a)(1) reveals that the mar-
3 gin of victory between the two candidates receiving
4 the largest number of votes in the election is equal
5 to or greater than 2 percent of the total votes cast
6 in that election, the hand counts of the voter-verified
7 paper ballots shall occur in at least 3 percent of all
8 precincts or equivalent locations (or alternative audit
9 units used in accordance with the method provided
10 for under subsection (b)) in the Congressional dis-
11 trict involved (in the case of an election for the
12 House of Representatives) or the State (in the case
13 of any other election for Federal office).

14 “(b) USE OF ALTERNATIVE MECHANISM.—

15 “(1) PERMITTING USE OF ALTERNATIVE MECH-
16 ANISM.—Notwithstanding subsection (a), a State
17 may adopt and apply an alternative mechanism to
18 determine the number of voter-verified paper ballots
19 which will be subject to the hand counts required
20 under this subtitle with respect to an election, so
21 long as the alternative mechanism uses the voter-
22 verified paper ballots to conduct the audit and the
23 National Institute of Standards and Technology de-
24 termines that the alternative mechanism is in ac-

1 cordance with the principles set forth in paragraph
2 (2).

3 “(2) PRINCIPLES FOR APPROVAL.—In approv-
4 ing an alternative mechanism under paragraph (1),
5 the National Institute of Standards and Technology
6 shall ensure that the audit procedure will have the
7 property that for each election—

8 “(A) the alternative mechanism will be at
9 least as statistically effective in ensuring the ac-
10 curacy of the election results as the procedures
11 under this subtitle; or

12 “(B) the reported election outcome will
13 have at least a 95 percent chance of being con-
14 sistent with the election outcome that would be
15 obtained by a full recount.

16 “(3) DEADLINE FOR RESPONSE.—The Director
17 of the National Institute of Standards and Tech-
18 nology shall make a determination regarding a
19 State’s request to approve an alternative mechanism
20 under paragraph (1) not later than 30 days after re-
21 ceiving the State’s request.

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

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

1 “(1) Within 24 hours after the State announces
2 the final unofficial vote count (as defined by the
3 State) in each precinct in the State, the Election
4 Auditor shall—

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

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

20 “(2) With respect to votes cast other than at
21 the precinct on the date of the election (other than
22 votes cast before the date of the election described
23 in paragraph (2)) or votes cast by provisional ballot
24 on the date of the election which are certified and
25 counted by the State on or after the date of the elec-

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

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

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

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

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

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

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

18 “(1) IN GENERAL.—If the Election Auditor
19 finds that any of the hand counts administered
20 under this section do not match the final unofficial
21 tally of the results of an election, the Election Audi-
22 tor shall administer hand counts under this section
23 of such additional precincts (or alternative audit
24 units) as the Election Auditor considers appropriate

1 to resolve any concerns resulting from the audit and
2 ensure the accuracy of the election results.

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

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

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

15 “(a) IN GENERAL.—Except as provided in subsection
16 (c), the selection of the precincts or alternative audit units
17 in the State in which the Election Auditor of the State
18 shall administer the hand counts under this subtitle shall
19 be made by the Election Auditor on a random basis, in
20 accordance with procedures adopted by the National Insti-
21 tute of Standards and Technology, except that at least one
22 precinct shall be selected at random in each county, with
23 additional precincts selected by the Election Auditor at the
24 Auditor’s discretion.

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

4 “(c) MANDATORY SELECTION OF PRECINCTS ESTAB-
5 LISHED SPECIFICALLY FOR ABSENTEE BALLOTS.—If a
6 State does not sort absentee ballots by precinct and in-
7 clude those ballots in the hand count with respect to that
8 precinct, the State shall create absentee ballot precincts
9 or audit units which are of similar size to the average pre-
10 cinct or audit unit in the jurisdiction being audited, and
11 shall include those absentee precincts or audit units
12 among the precincts in the State in which the Election
13 Auditor shall administer the hand counts under this sub-
14 title.

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

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

21 “(a) SUBMISSION TO COMMISSION.—As soon as prac-
22 ticable after the completion of an audit under this subtitle,
23 the Election Auditor of a State shall submit to the Com-
24 mission the results of the audit, and shall include in the
25 submission a comparison of the results of the election in

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

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

16 “(c) DELAY IN CERTIFICATION OF RESULTS BY
17 STATE.—

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

22 “(A) to the completion of the audit (and,
23 if required, any additional audit conducted
24 under section 323(e)(1)) and the announcement
25 and submission of the results of each such audit

1 to the Commission for publication of the infor-
2 mation required under this section; and

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

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

19 **“SEC. 326. PAYMENTS TO STATES.**

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

1 that are the subject of the audits conducted under this
2 subtitle.

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

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

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

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

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

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

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

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

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

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

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

20 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Commission for
22 fiscal year 2010 and each succeeding fiscal year
23 \$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 con-
22 sistent with the principles for approval described in section
23 322(b)(2) 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.

○