

1 the voter's vote is cast and counted. For
2 purposes of this subclause, an individual
3 voter-verified paper ballot includes (but is
4 not limited to) a paper ballot marked by
5 the voter for the purpose of being counted
6 by hand or read by an optical scanner or
7 other similar device, a paper ballot pre-
8 pared by the voter to be mailed to an elec-
9 tion official (whether from a domestic or
10 overseas location), a paper ballot created
11 through the use of a ballot marking device
12 or system, or a paper ballot produced by a
13 touch screen or other electronic voting ma-
14 chine, so long as in each case the voter is
15 permitted to verify the ballot in a paper
16 form in accordance with this subpara-
17 graph.

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

24 “(III) The voting system shall not
25 preserve the voter-verified paper ballots in

1 any manner that makes it possible, at any
2 time after the ballot has been cast, to asso-
3 ciate a voter with the record of the voter's
4 vote.

5 “(IV) The requirement of subclause
6 (I) that the voting system produce an indi-
7 vidual voter-verified paper ballot may not
8 be construed to prohibit a jurisdiction from
9 meeting the requirement through the use
10 of a thermal reel-to-reel voter verified
11 paper ballot printer attached to a direct re-
12 cording electronic voting machine in the
13 case of elections held prior to 2012.

14 “(ii) PRESERVATION.—The voter-
15 verified paper ballot produced in accord-
16 ance with clause (i) shall be used as the of-
17 ficial ballot for purposes of any recount or
18 audit conducted with respect to any elec-
19 tion for Federal office in which the voting
20 system is used, and shall be preserved—

21 “(I) in the case of votes cast at
22 the polling place on the date of the
23 election, within the polling place in a
24 secure manner on such date; or

1 “(II) in any other case, in a se-
2 cure manner which is consistent with
3 the manner employed by the jurisdic-
4 tion for preserving such ballots in
5 general.

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

14 “(II) In the event of any inconsist-
15 encies or irregularities between any elec-
16 tronic vote tallies and the vote tallies de-
17 termined by counting by hand the voter-
18 verified paper ballots produced pursuant to
19 clause (i), and subject to subparagraph
20 (B), the voter-verified paper ballots shall
21 be the true and correct record of the votes
22 cast.

23 “(B) SPECIAL RULE FOR TREATMENT OF
24 DISPUTES WHEN PAPER BALLOTS HAVE BEEN
25 SHOWN TO BE COMPROMISED.—

1 “(i) IN GENERAL.—In the event
2 that—

3 “(I) there is any inconsistency
4 between any electronic vote tallies and
5 the vote tallies determined by count-
6 ing by hand the voter-verified paper
7 ballots produced pursuant to subpara-
8 graph (A)(i) with respect to any elec-
9 tion for Federal office; and

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

22 the determination of the appropriate rem-
23 edy with respect to the election shall be
24 made in accordance with applicable State
25 law, except that the electronic tally shall

1 not be used as the exclusive basis for de-
2 termining the official certified vote tally.

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

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

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

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

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

4 (C) in subparagraph (A)(iii), by striking
5 “counted” each place it appears and inserting
6 “counted, in accordance with paragraphs (2)
7 and (3)”;

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

11 (b) ACCESSIBILITY AND BALLOT VERIFICATION FOR
12 INDIVIDUALS WITH DISABILITIES.—

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

16 “(B)(i) satisfy the requirement of subpara-
17 graph (A) through the use of at least one voting
18 system equipped for individuals with disabil-
19 ities, including nonvisual and enhanced visual
20 accessibility for the blind and visually impaired,
21 at each polling place; and

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

1 “(I) allows the voter to privately and
2 independently verify the paper ballot
3 through the conversion of the printed or
4 marked vote selections into accessible form,
5 including nonvisual and enhanced visual
6 forms,

7 “(II) ensures that the entire process
8 of ballot verification and vote casting is
9 equipped for individuals with disabilities,
10 including nonvisual and enhanced visual
11 accessibility for the blind and visually im-
12 paired and through mechanisms that do
13 not require a voter to manually handle the
14 paper ballot, which may include the use of
15 mechanisms that provide voters with the
16 option of automatically placing the ballot
17 into a secure container for subsequent
18 counting, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (3) REQUIRING ONGOING REVIEW OF PROGRESS
20 MADE IN DEVELOPING VOTING SYSTEMS MEETING
21 NEW ACCESSIBILITY AND BALLOT VERIFICATION RE-
22 QUIREMENTS.—

23 (A) REVIEW.—Not later than January 1 of
24 2009, 2010, and 2011, the Election Assistance
25 Commission—

1 (i) shall conduct a review of the
2 progress made by manufacturers of voting
3 systems in developing systems which meet
4 the accessibility and ballot verification re-
5 quirements which will take effect beginning
6 in 2012 under section 301(a)(3)(B) of the
7 Help America Vote Act of 2002, as amend-
8 ed by paragraph (1), or in developing tech-
9 nologies which enable existing systems to
10 be upgraded to meet such requirements;
11 and

12 (ii) shall publish and disseminate its
13 findings by posting them on the public
14 Internet site of the Commission and
15 through such other methods as the Com-
16 mission considers appropriate.

17 (B) ASSESSMENT OF PROGRESS OF INDI-
18 VIDUAL VOTING SYSTEMS.—In conducting the
19 review required under this paragraph, the Com-
20 mission shall include a separate, individual as-
21 sessment with respect to each voting system, in-
22 cluding a statement of the specific accessibility
23 and ballot verification features available at the
24 time of the review for each such system.

1 (C) CONSULTATION.—The Election Assist-
2 ance Commission shall carry out its responsibil-
3 ities under this paragraph in consultation with
4 the Association of Assistive Technology Act
5 Programs and representatives of experts in the
6 area of electronic voting security.

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

17 (c) ADDITIONAL VOTING SYSTEM REQUIREMENTS.—

18 (1) REQUIREMENTS DESCRIBED.—Section
19 301(a) of such Act (42 U.S.C. 15481(a)) is amend-
20 ed by adding at the end the following new para-
21 graphs:

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

24 “(A) IN GENERAL.—The appropriate elec-
25 tion official at each polling place shall cause to

1 be placed in a prominent location in the polling
2 place which is clearly visible from the voting
3 booths a notice, in large font print accessible to
4 the visually impaired, advising voters that the
5 paper ballots representing their votes shall serve
6 as the vote of record in all audits and recounts
7 in elections for Federal office, and that they
8 should not leave the voting booth until con-
9 firming that such paper ballots accurately
10 record their vote.

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

18 “(8) PROHIBITING USE OF UNCERTIFIED ELEC-
19 TION-DEDICATED VOTING SYSTEM TECHNOLOGIES;
20 DISCLOSURE REQUIREMENTS.—

21 “(A) IN GENERAL.—A voting system used
22 in an election for Federal office in a State may
23 not at any time during the election contain or
24 use any election-dedicated voting system tech-
25 nology which has not been certified by the State

1 for use in the election and which has not been
2 deposited with an accredited laboratory de-
3 scribed in section 231 to be held in escrow and
4 disclosed in accordance with this section.

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

10 “(i) hold the technology in escrow;

11 and

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

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

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

1 “(C) QUALIFIED PERSONS DESCRIBED.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(E) ELECTION-DEDICATED VOTING SYS-
5 TEM TECHNOLOGY DEFINED.—For purposes of
6 this paragraph, ‘election-dedicated voting sys-
7 tem technology’ means ‘voting system software’
8 as defined under the 2005 voluntary voting sys-
9 tem guidelines adopted by the Commission
10 under section 222, but excludes ‘commercial-
11 off-the-shelf’ software and hardware defined
12 under those guidelines.

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

22 “(10) PROHIBITING CONNECTION OF SYSTEM
23 OR TRANSMISSION OF SYSTEM INFORMATION OVER
24 THE INTERNET.—No component of any voting de-
25 vice upon which ballots are programmed or votes are

1 cast or tabulated shall be connected to the Internet
2 at any time.

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

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

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

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

22 “(ii) The manufacturer shall disclose
23 to an accredited laboratory under section
24 231 and to the appropriate election official

1 any information required to be disclosed
2 under paragraph (8).

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

7 “(I) alter such software; or

8 “(II) insert or use in the voting
9 system any software not certified by
10 the State for use in the election.

11 “(iv) At the request of the Commis-
12 sion—

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

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

22 “(C) DEVELOPMENT AND PUBLICATION OF
23 BEST PRACTICES ON DOCUMENTATION OF SE-
24 CURE CHAIN OF CUSTODY.—Not later than Au-
25 gust 1, 2008, the Commission shall develop and

1 make publicly available best practices regarding
2 the requirement of subparagraph (B)(i).

3 “(D) DISCLOSURE OF SECURE CHAIN OF
4 CUSTODY.—The Commission shall make infor-
5 mation provided to the Commission under sub-
6 paragraph (B)(i) available to any person upon
7 request.

8 “(12) DURABILITY AND READABILITY REQUIRE-
9 MENTS FOR BALLOTS.—

10 “(A) DURABILITY REQUIREMENTS FOR
11 PAPER BALLOTS.—

12 “(i) IN GENERAL.—All voter-verified
13 paper ballots required to be used under
14 this Act (including the paper ballots pro-
15 vided to voters under paragraph (13)) shall
16 be individual ballots which are marked,
17 printed, or recorded on durable paper.

18 “(ii) DEFINITION.—For purposes of
19 this Act, paper is ‘durable’ if it is capable
20 of withstanding multiple counts and re-
21 counts by hand without compromising the
22 fundamental integrity of the ballots, and
23 capable of retaining the information
24 marked, printed, or recorded on them for

1 the full duration of a retention and preser-
2 vation period of 22 months.

3 “(B) READABILITY REQUIREMENTS FOR
4 MACHINE-MARKED OR PRINTED PAPER BAL-
5 LOTS.—All voter-verified paper ballots com-
6 pleted by the voter through the use of a mark-
7 ing or printing device shall be clearly readable
8 by the voter without assistance (other than eye-
9 glasses or other personal vision enhancing de-
10 vices) and by a scanner or other device
11 equipped for individuals with disabilities.

12 “(13) MANDATORY AVAILABILITY OF PAPER
13 BALLOTS AT POLLING PLACE.—

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

1 the supplies necessary to mark the ballot, and
2 shall ensure (to the greatest extent practicable)
3 that the waiting period for the individual to
4 cast a vote is not greater than the waiting pe-
5 riod for an individual who does not agree to
6 cast the vote using such a paper ballot under
7 this paragraph.

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

20 “(C) POSTING OF NOTICE.—The appro-
21 priate election official shall ensure that at each
22 polling place a notice is displayed prominently
23 which describes the obligation of the official to
24 offer individuals the opportunity to cast votes

1 using a pre-printed paper ballot under this
2 paragraph.

3 “(D) 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 (C), and are
9 aware that it is a violation of the requirements
10 of this title for an election official to fail to
11 offer an individual the opportunity to cast a
12 vote using a pre-printed paper ballot under this
13 paragraph.

14 “(E) EFFECTIVE DATE.—

15 “(i) APPLICATION PRIOR TO 2010.—
16 This paragraph shall apply with respect to
17 the regularly scheduled general election for
18 Federal office in November 2008 and any
19 subsequent election for Federal office held
20 prior to 2010, but only in the event of the
21 failure of the voting system in use at the
22 polling place.

23 “(ii) RULE FOR 2010 AND SUC-
24 CEEDING YEARS.—This paragraph shall
25 apply with respect to elections for Federal

1 office held in 2010 and any succeeding
2 year, except that in the case of a polling
3 place in operation prior to the date of the
4 election, during days prior to the date of
5 the election this paragraph shall apply only
6 in the event of the failure of the voting
7 system.”.

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

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

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

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

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

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

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

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

19 “(iv) the laboratory, upon completion
20 of any testing carried out under this sec-
21 tion, discloses the test protocols, plans,
22 documentation, results, and all commu-
23 nication between the laboratory and the
24 manufacturer to the Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (A) IN GENERAL.—If any of the voting
9 systems used in a State for the regularly sched-
10 uled 2006 general elections for Federal office
11 did not require the use of or produce durable
12 paper ballots, or did not provide for a process
13 of paper ballot verification and casting which
14 was accessible for individuals with disabilities,
15 the State shall certify to the Election Assist-
16 ance Commission not later than 90 days after
17 the date of the enactment of this Act that the
18 State will be in compliance with the require-
19 ments of sections 301(a)(2), 301(a)(3), and
20 301(a)(12) of the Help America Vote of 2002,
21 as added or amended by this subsection, in ac-
22 cordance with the deadlines established under
23 this Act, and shall include in the certification
24 the methods by which the State will meet the
25 requirements.

1 (B) CERTIFICATIONS BY STATES THAT RE-
2 QUIRE CHANGES TO STATE LAW.—In the case
3 of a State that requires State legislation to
4 carry out an activity covered by any certifi-
5 cation submitted under this paragraph, the
6 State shall be permitted to make the certifi-
7 cation notwithstanding that legislation has not
8 been enacted at the time the certification is
9 submitted and such State shall submit an addi-
10 tional certification once such legislation is en-
11 acted.

12 (4) GRANTS FOR RESEARCH ON DEVELOPMENT
13 OF ELECTION-DEDICATED VOTING SYSTEM SOFT-
14 WARE.—

15 (A) IN GENERAL.—Subtitle D of title II of
16 the Help America Vote Act of 2002 (42 U.S.C.
17 15401 et seq.) is amended by adding at the end
18 the following new part:

1 **“PART 7—GRANTS FOR RESEARCH ON DEVELOP-**
2 **MENT OF ELECTION-DEDICATED VOTING**
3 **SYSTEM SOFTWARE**

4 **“SEC. 297. GRANTS FOR RESEARCH ON DEVELOPMENT OF**
5 **ELECTION-DEDICATED VOTING SYSTEM**
6 **SOFTWARE.**

7 “(a) IN GENERAL.—The Director of the National
8 Science Foundation (hereafter in this part referred to as
9 the ‘Director’) shall carry out a program to award grants
10 for research related to the development of election-dedi-
11 cated voting system software.

12 “(b) MERIT REVIEW.—Grants shall be provided
13 under this section on a competitive, merit-reviewed basis.

14 “(c) APPLICATION.—An applicant seeking funding
15 under this section shall submit an application to the Direc-
16 tor at such time, in such manner, and containing such
17 information as the Director may require.

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

22 (B) CLERICAL AMENDMENT.—The table of
23 contents of such Act is amended by adding at
24 the end of the items relating to subtitle D of
25 title II the following:

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

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

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

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

9 “(4) For fiscal year 2008, \$1,000,000,000,
10 which may be used only to meet the requirements of
11 section 301 which are first imposed on a State pur-
12 suant to the amendments made by section 2 of the
13 Voter Confidence and Increased Accessibility Act of
14 2007, in accordance with the certifications submitted
15 by the State under section 253(f)(1)(A).

16 “(5) For fiscal year 2009, such sums as may be
17 necessary to enable the States to meet—

18 “(A) the requirements of section
19 301(a)(3)(B) which are first imposed on the
20 State pursuant to the amendment made by sec-
21 tion 2(b)(1) of the Voter Confidence and In-
22 creased Accessibility Act of 2007 (relating to

1 accessibility and ballot verification for individ-
2 uals with disabilities); and

3 “(B) the requirements of section
4 301(a)(12) (relating to durability and read-
5 ability requirements for ballots).”.

6 (2) USE OF REVISED FORMULA FOR ALLOCA-
7 TION OF FUNDS APPROPRIATED FOR FISCAL YEAR
8 2008.—Section 252(b) of such Act (42 U.S.C.
9 15402(b)) is amended to read as follows:

10 “(b) STATE ALLOCATION PERCENTAGE DEFINED.—

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

15 “(A) the voting age population of the State
16 (as reported in the most recent decennial cen-
17 sus); and

18 “(B) the total voting age population of all
19 States (as reported in the most recent decennial
20 census).

21 “(2) SPECIAL RULE FOR PAYMENTS FOR FIS-
22 CAL YEAR 2008.—

23 “(A) IN GENERAL.—In the case of the re-
24 quirements payment made to a State for fiscal
25 year 2008, the ‘State allocation percentage’ for

1 a State is the amount (expressed as a percent-
2 age) equal to the quotient of—

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

7 “(ii) the sum of the number of non-
8 compliant precincts in all States and 50%
9 of the number of partially noncompliant
10 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 2006 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 2006 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 or produced durable,
8 readable paper ballots (as described in sec-
9 tion 301(a)(12)(A)) for every vote cast.

10 “(ii) The voting system provided that
11 the entire process of paper ballot
12 verification and casting was equipped for
13 individuals with disabilities (as described in
14 section 301(a)(3)(B)).”

15 (3) AMOUNT OF FISCAL YEAR 2009 PAYMENT
16 BASED ON COSTS OF MEETING DURABLE PAPER AND
17 REVISED ACCESSIBILITY REQUIREMENTS.—Section
18 252 of such Act (42 U.S.C. 15402) is amended—

19 (A) in subsection (a), by striking “sub-
20 section (c)” and inserting “subsections (c) and
21 (e)”;

22 (B) by redesignating subsection (e) as sub-
23 section (f); and

24 (C) by inserting after subsection (d) the
25 following new subsection:

1 “(e) SPECIAL RULE FOR FISCAL YEAR 2009.—

2 “(1) COVERAGE OF COSTS OF MEETING DURA-
3 BLE AND READABLE PAPER AND REVISED ACCESSI-
4 BILITY REQUIREMENTS.—The amount of a require-
5 ments payment made to a State from funds appro-
6 priated for fiscal year 2009 shall be equal to the
7 State’s estimate of the reasonable costs the State ex-
8 pects to incur to meet the requirements referred to
9 in paragraph (3), as contained in the statement filed
10 by the State with the Commission under section
11 253(f)(1)(B)(ii).

12 “(2) RECOUPMENT OF OVERPAYMENTS.—If a
13 State receives a requirements payment from funds
14 appropriated for fiscal year 2009, the State shall
15 agree to repay to the Commission the excess (if any)
16 of—

17 “(A) the amount of the payment; over

18 “(B) the actual costs incurred by the State
19 in meeting the requirements referred to in para-
20 graph (3), as contained in the statement filed
21 by the State with the Commission under section
22 253(f)(1)(B)(iii).

23 “(3) REQUIREMENTS DESCRIBED.—The re-
24 quirements referred to in this paragraph are—

1 “(A) the requirements of section
2 301(a)(3)(B) which are first imposed on the
3 State pursuant to the amendment made by sec-
4 tion 2(b)(1) of the Voter Confidence and In-
5 creased Accessibility Act of 2007 (relating to
6 accessibility and ballot verification for individ-
7 uals with disabilities); and

8 “(B) the requirements of section
9 301(a)(12) (relating to durability and read-
10 ability requirements for ballots).”.

11 (4) USE OF PAYMENTS; REVISED CONDITIONS
12 FOR RECEIPT OF FUNDS.—Section 253 of such Act
13 (42 U.S.C. 15403) is amended—

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

17 (B) by adding at the end the following new
18 subsection:

19 “(f) SPECIAL RULES FOR FISCAL YEARS 2008 AND
20 2009.—

21 “(1) IN GENERAL.—

22 “(A) FISCAL YEAR 2008.—Notwithstanding
23 any other provision of this part, a State is eligi-
24 ble to receive a requirements payment for fiscal
25 year 2008 if, not later than 90 days after the

1 date of the enactment of the Voter Confidence
2 and Increased Accessibility Act of 2007, the
3 chief executive officer of the State, or designee,
4 in consultation and coordination with the chief
5 State election official—

6 “(i) certifies to the Commission the
7 number of noncompliant and partially non-
8 compliant precincts in the State (as de-
9 fined in section 252(b)(2));

10 “(ii) certifies to the Commission that
11 the State will use the payment to meet the
12 requirements of section 301 which are first
13 imposed on the State pursuant to the
14 amendments made by the Voter Confidence
15 and Increased Accessibility Act of 2007
16 and which apply with respect to the regu-
17 larly scheduled general election for Federal
18 office held in November 2008; and

19 “(iii) to the extent that the State is or
20 will be in compliance with the requirements
21 referred to in clause (ii), files an additional
22 statement certifying that the State will use
23 the payment (or any portion of the pay-
24 ment) to take actions to meet the require-
25 ments of section 301 which are first im-

1 posed on the State pursuant to the amend-
2 ments made by the Voter Confidence and
3 Increased Accessibility Act of 2007 and
4 which apply with respect to elections for
5 Federal office held in 2012 and each suc-
6 ceeding year.

7 “(B) FISCAL YEAR 2009.—Notwithstanding
8 any other provision of this part, a State is eligi-
9 ble to receive a requirements payment from
10 funds appropriated for fiscal year 2009 if, at
11 any time after the funds are appropriated, the
12 chief executive officer of the State, or designee,
13 in consultation and coordination with the chief
14 State election official—

15 “(i) certifies to the Commission that
16 the State has identified equipment that
17 meets the requirements of section
18 301(a)(3)(B) which are first imposed on
19 the State pursuant to the amendment
20 made by section 2(b)(1) of the Voter Con-
21 fidence and Increased Accessibility Act of
22 2007 (relating to accessibility and ballot
23 verification for individuals with disabil-
24 ities), or that enables the State to upgrade

1 its voting system to meet such require-
2 ments;

3 “(ii) certifies to the Commission that
4 the State will use the payment, as well as
5 any portion of a requirements payment re-
6 ceived for fiscal year 2008 which remains
7 unexpended at the time the statement is
8 filed, to meet such requirements, as well as
9 the requirements of section 301(a)(12) (re-
10 lating to durability and readability require-
11 ments for ballots), including by upgrading
12 its voting systems to meet such require-
13 ments, and containing the State’s estimate
14 of the reasonable costs the State expects to
15 incur to meet all such requirements; and

16 “(iii) certifies to the Commission that,
17 upon completing the replacement or up-
18 grading of its voting systems to meet all
19 such requirements, the State will file a
20 statement with the Commission containing
21 the actual costs incurred by the State in
22 meeting all such requirements.

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

1 activity covered by any certification submitted under
2 this subsection, the State shall be permitted to make
3 the certification notwithstanding that the legislation
4 has not been enacted at the time the certification is
5 submitted and such State shall submit an additional
6 certification once such legislation is enacted.”.

7 (5) PERMITTING USE OF FUNDS FOR REIM-
8 BURSEMENT FOR COSTS PREVIOUSLY INCURRED.—
9 Section 251(c)(1) of such Act (42 U.S.C.
10 15401(c)(1)) is amended by striking the period at
11 the end and inserting the following: “, or as a reim-
12 bursement for any costs incurred in meeting the re-
13 quirements of title III which are imposed pursuant
14 to the amendments made by section 2 of the Voter
15 Confidence and Increased Accessibility Act of 2007
16 or in otherwise upgrading or replacing voting sys-
17 tems in response to such amendments.”.

18 (6) TREATMENT OF CERTAIN DISABILITY
19 FUNDING REQUIREMENT.—Section 301(a)(3)(C) of
20 such Act (42 U.S.C. 15481(a)(3)(C)) is amended by
21 striking “January 1, 2007,” and inserting “January
22 1, 2007 (other than funds made available pursuant
23 to the amendments made by the Voter Confidence
24 and Increased Accessibility Act of 2007)”.

1 (7) RULE OF CONSTRUCTION REGARDING USE
2 OF FUNDS TO REPLACE OR UPGRADE SYSTEMS OB-
3 TAINED WITH FUNDS PROVIDED PREVIOUSLY UNDER
4 HELP AMERICA VOTE ACT OF 2002.—Nothing in the
5 amendments made by this subsection or in any other
6 provision of the Help America Vote Act of 2002 may
7 be construed to prohibit a State from using any
8 funds provided under such Act pursuant to the
9 amendments made by this subsection (or any funds
10 provided under such Act prior to the date of the en-
11 actment of this Act which remain unexpended as of
12 the date of the enactment of this Act) to replace or
13 upgrade a voting system purchased or otherwise ob-
14 tained in whole or in part using funds received
15 under title I or II of the Help America Vote Act at
16 any time before the date of the enactment of this
17 Act.

18 (8) EFFECTIVE DATE.—The amendments made
19 by this subsection shall apply with respect to fiscal
20 years beginning with fiscal year 2008.

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 (ex-
16 cept as may otherwise be provided under any
17 such requirement).

18 “(B) EXCEPTION FOR CERTAIN REQUIRE-
19 MENTS.—

20 “(i) IN GENERAL.—In the case of the
21 requirements referred to in clause (ii), the
22 requirements shall apply with respect to
23 elections for Federal office held during
24 2012 and each succeeding year.

1 “(ii) REQUIREMENTS DESCRIBED.—

2 The requirements referred to in this clause
3 are—

4 “(I) the requirements of para-
5 graph (3)(B)(ii)(I) and (II) of sub-
6 section (a) (relating to ballot
7 verification for individuals with dis-
8 abilities); and

9 “(II) the requirements of para-
10 graph (12) of subsection (a) (relating
11 to durability and readability require-
12 ments for ballots).

13 “(iii) PERMITTING COMPLIANCE WITH
14 REQUIREMENTS PRIOR TO DEADLINE.—
15 Nothing in this subsection may be con-
16 strued to prohibit a State or jurisdiction
17 from meeting the requirements referred to
18 in clause (ii) prior to the deadline applica-
19 ble under clause (i).”.

20 **SEC. 3. ENHANCEMENT OF ENFORCEMENT OF HELP AMER-**
21 **ICA VOTE ACT OF 2002.**

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

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

4 (2) by adding at the end the following new sub-
5 sections:

6 “(b) FILING OF COMPLAINTS BY AGGRIEVED PER-
7 SONS.—

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

20 “(2) RESPONSE BY ATTORNEY GENERAL.—The
21 Attorney General shall respond to each complaint
22 filed under paragraph (1), in accordance with proce-
23 dures established by the Attorney General that re-
24 quire responses and determinations to be made with-
25 in the same (or shorter) deadlines which apply to a

1 State under the State-based administrative com-
2 plaint procedures described in section 402(a)(2).
3 The Attorney General shall immediately provide a
4 copy of the response made under the previous sen-
5 tence to the entity responsible for administering the
6 State-based administrative complaint procedures de-
7 scribed in section 402(a) for the State involved.

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

19 “(d) NO EFFECT ON STATE PROCEDURES.—Nothing
20 in this section may be construed to affect the availability
21 of the State-based administrative complaint procedures re-
22 quired under section 402 to any person filing a complaint
23 under this subsection.”.

1 **SEC. 4. REQUIREMENT FOR MANDATORY MANUAL AUDITS**
2 **BY HAND COUNT.**

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

7 **“Subtitle C—Mandatory Manual**
8 **Audits**

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

10 “(a) REQUIRING AUDITS.—

11 “(1) IN GENERAL.—In accordance with this
12 subtitle, each State shall administer, without ad-
13 vance notice to the precincts selected, audits of the
14 results of elections for Federal office held in the
15 State (and, at the option of the State or jurisdiction
16 involved, of elections for State and local office held
17 at the same time as such election) consisting of ran-
18 dom hand counts of the voter-verified paper ballots
19 required to be produced and preserved pursuant to
20 section 301(a)(2).

21 “(2) EXCEPTION FOR CERTAIN ELECTIONS.—A
22 State shall not be required to administer an audit of
23 the results of an election for Federal office under
24 this subtitle if the winning candidate in the elec-
25 tion—

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

1 “(B) received 80% or more of the total
2 number of votes cast in the election, as deter-
3 mined on the basis of the final unofficial vote
4 count.

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

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

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

23 “(a) IN GENERAL.—Except as provided in subsection
24 (b), the number of voter-verified paper ballots which will
25 be subject to a hand count administered by the Election

1 Auditor of a State under this subtitle with respect to an
2 election shall be determined as follows:

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

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

1 (b)) in the Congressional district involved (in the
2 case of an election for the House of Representatives)
3 or the State (in the case of any other election for
4 Federal office).

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

18 “(b) USE OF ALTERNATIVE MECHANISM.—Notwith-
19 standing subsection (a), a State may adopt and apply an
20 alternative mechanism to determine the number of voter-
21 verified paper ballots which will be subject to the hand
22 counts required under this subtitle with respect to an elec-
23 tion, so long as the alternative mechanism uses the voter-
24 verified paper ballots to conduct the audit and the Na-
25 tional Institute of Standards and Technology determines

1 that the alternative mechanism will be at least as statis-
2 tically effective in ensuring the accuracy of the election
3 results as the procedure under this subtitle.

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

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

8 “(1) Within 24 hours after the State announces
9 the final unofficial vote count (as defined by the
10 State) in each precinct in the State, the Election
11 Auditor shall determine and then announce the pre-
12 cincts or equivalent locations (or alternative audit
13 units used in accordance with the method provided
14 under section 322(b)) in the State in which it will
15 administer the audits.

16 “(2) With respect to votes cast at the precinct
17 or equivalent location on or before the date of the
18 election (other than provisional ballots described in
19 paragraph (3)), the Election Auditor shall admin-
20 ister the hand count of the votes on the voter-
21 verified paper ballots required to be produced and
22 preserved under section 301(a)(2)(A) and the com-
23 parison of the count of the votes on those ballots
24 with the final unofficial count of such votes as an-
25 nounced by the State.

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

17 “(b) USE OF ELECTION PERSONNEL.—In admin-
18 istering the audits, the Election Auditor may utilize the
19 services of jurisdiction personnel, including election ad-
20 ministration personnel and poll workers, without regard
21 to whether or not the personnel have professional auditing
22 experience.

23 “(c) LOCATION.—The Election Auditor shall admin-
24 ister an audit of an election at the location where the bal-
25 lots cast in the election are stored and counted after the

1 date of the election, or such other appropriate and secure
2 location agreed upon by the Election Auditor and the indi-
3 vidual who is responsible under State law for the custody
4 of the ballots, and in the presence of the personnel who
5 under State law are responsible for the custody of the bal-
6 lots.

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

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

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

1 tor shall administer hand counts under this section
2 of such additional precincts (or equivalent jurisdic-
3 tions) as the Election Auditor considers appropriate
4 to resolve any concerns resulting from the audit and
5 ensure the accuracy of the results.

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

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

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

18 “(a) IN GENERAL.—Except as provided in subsection
19 (c), the selection of the precincts in the State in which
20 the Election Auditor of the State shall administer the
21 hand counts under this subtitle shall be made by the Elec-
22 tion Auditor on an entirely random basis using a uniform
23 distribution in which all precincts in a Congressional dis-
24 trict have an equal chance of being selected, in accordance
25 with procedures adopted by the Commission, except that

1 at least one precinct shall be selected at random in each
2 county.

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

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

17 “(d) DEADLINE FOR ADOPTION OF PROCEDURES BY
18 COMMISSION.—The Commission shall adopt the proce-
19 dures described in subsection (a) not later than March 31,
20 2008, and shall publish them in the Federal Register upon
21 adoption.

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

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

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

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

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

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

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

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

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

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

21 **“SEC. 326. PAYMENTS TO STATES.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to the Commission for
24 fiscal year 2008 and each succeeding fiscal year
25 \$100,000,000 for payments under this section.

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

4 “(a) EXCEPTION.—This subtitle does not apply to
5 any election for which a recount under State law will com-
6 mence prior to the certification of the results of the elec-
7 tion, including but not limited to a recount required auto-
8 matically because of the margin of victory between the two
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% of the ballots cast in the election—

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

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

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

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

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

16 **“SEC. 328. EFFECTIVE DATE.**

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

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

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

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

6 (3) in subsection (c)—

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

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

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

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

1 (2) AUTHORIZATION OF APPROPRIATIONS.—

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

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

“Subtitle C—Mandatory Manual Audits

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

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

“Sec. 323. Process for administering audits.

“Sec. 324. Selection of precincts.

“Sec. 325. Publication of results.

“Sec. 326. Payments to States.

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

“Sec. 328. Effective date.”.

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

9 **COMMISSION FROM CERTAIN GOVERNMENT**

10 **CONTRACTING REQUIREMENTS.**

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

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

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

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

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