

H.R.2894

Title: 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.

Sponsor: [Rep Holt, Rush D.](#) [NJ-12] (introduced 6/16/2009) [Cosponsors](#) (97)

Related Bills: [S.1431](#)

Latest Major Action: 6/19/2009 Referred to House subcommittee. Status: Referred to the Subcommittee on Technology and Innovation.

SUMMARY AS OF:

6/16/2009--Introduced.

Voter Confidence and Increased Accessibility Act of 2009 - Amends the Help America Vote Act of 2002 (HAVA) to revise requirements for the audit capacity of voting systems, particularly those for a permanent paper record.

Requires the voting system to require the use of an individual, durable, voter-verified paper ballot of the voter's vote that shall be marked and made available for inspection by the voter before the voter's vote is cast and counted, and which shall be counted by hand or read by an optical scanner or other counting device. Requires the voting system to provide the voter with an opportunity to correct any system-made error in the voter-verified paper ballot before it is permanently preserved.

Requires each paper ballot used to be: (1) suitable for a manual audit; and (2) counted by hand in any recount or audit conducted with respect to any federal election.

Sets forth a special rule for treatment of disputes when paper ballots have been shown to be compromised.

Requires the Director of the National Science Foundation (NSF) to make grants to eligible entities to study, test, and develop accessible ballot voting, verification, and casting mechanisms and devices and best practices to enhance the accessibility of paper ballot voting and verification mechanisms for individuals with disabilities, for voters whose primary language is not English, and for voters with difficulties in literacy.

Specifies additional voting system requirements and prohibitions.

Requires the NSF Director to make grants to eligible entities to conduct research on the development of election-dedicated voting system software.

Makes available additional funding to enable states to meet the costs of the requirements imposed by this Act.

Provides for complaints to the Attorney General by persons aggrieved by violations of HAVA.

Requires each state to administer audits of federal election results, without advance notice to the precincts selected, consisting of random hand counts of the voter-verified paper ballots.

Makes an exception from this requirement for elections in which the winning candidate had no opponent or received 80% or more of the vote total.

Prescribes requirements for determination of the number of ballots counted under the audit.

Prescribes the process for administering audits.

Requires the Election Auditor of a state, as soon as practicable after the completion of an audit, to submit the results to the Election Assistance Commission (EAC) for publication.

Prohibits certification of the results of any election until completion of audits.

Provides for payments to states for the costs of conducting audits.

Exempts from this Act any election for which a recount under state law will commence before certification of the election results.

Repeals the EAC's exemption from certain federal government contracting requirements.

HR 2894 IH

111th CONGRESS
1st Session
H. R. 2894

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 HOUSE OF REPRESENTATIVES

June 16, 2009

Mr. HOLT (for himself, Mr. LARSON of Connecticut, Mr. WEXLER, Mr. CAPUANO, Mr. OBEY, Mr. SERRANO, Ms. WASSERMAN SCHULTZ, Ms. LEE of California, Mr. LEWIS of Georgia, Mr. WAXMAN, Mr. GEORGE MILLER of California, Mr. NADLER of New York, Mr. HINCHEY, Ms. KAPTUR, Mr. HASTINGS of Florida, Mr. FRANK of Massachusetts, Ms. PINGREE of Maine, Mr. FATTAH, Mr. MORAN of Virginia, Mr. BLUMENAUER, Ms. CORRINE BROWN of Florida, Ms. BALDWIN, Mr. ISRAEL, Mrs. MALONEY, Mrs. CAPPS, Mr. MCGOVERN, Mr. JOHNSON of Georgia, Mr. GENE GREEN of Texas, Mr. AL GREEN of Texas, Mr. ANDREWS, Mr. COHEN, Mr. PAYNE, Mr. TIERNEY, Mr. ROTHMAN of New Jersey, Mr. CARNEY, Mr. STARK, Mr. DOYLE, Mr. OBERSTAR, Mr. WALZ, Mr. ABERCROMBIE, Mr. MCINTYRE, Mr. JACKSON of Illinois, Mr. CLAY, Mr. SESTAK, Mr. MEEKS of New York, Mr. KLEIN of Florida, Ms. EDWARDS of Maryland, Mr. FARR, Mr. OLVER, Ms. LINDA T. SANCHEZ of California, Mr. PERRIELLO, Mr. LOEBSACK, Mr. FILNER, Mr. SIRES, Mr. HONDA, Mr. WU, Mr. SCHIFF, Mr. PALLONE, Mr. ORTIZ, Mr.

DEFAZIO, Mr. BARROW, Mr. HIMES, Mr. CROWLEY, Ms. SCHAKOWSKY, Mr. INSLEE, Mr. MASSA, Mr. SMITH of Washington, Mr. MCDERMOTT, Mr. BISHOP of New York, Mr. ALTMIRE, Mr. POLIS of Colorado, Mr. LANCE, Mr. LOBIONDO, Ms. CASTOR of Florida, Mr. LARSEN of Washington, and Mrs. LOWEY) introduced the following bill; which was referred to the Committee on House Administration, and in addition to the Committee on Science and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the 'Voter Confidence and Increased Accessibility Act of 2009'.

(b) Table of Contents- The table of contents of 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 REQUIREMENTS

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

TITLE V--EFFECTIVE DATE

Sec. 501. Effective date.

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

SEC. 101. PAPER BALLOT AND MANUAL COUNTING REQUIREMENTS.

(a) In General- Section 301(a)(2) of the Help America Vote Act of 2002 (42 U.S.C. 15481(a)(2)) is amended to read as follows:

` (2) PAPER BALLOT REQUIREMENT-

` (A) VOTER-VERIFIED PAPER BALLOTS-

` (i) PAPER BALLOT REQUIREMENT- (I) The voting system shall require the use of an individual, durable, voter-verified, paper ballot of the voter's vote that shall be marked and made available for inspection and verification by the voter before the voter's vote is cast and counted, and which shall be counted by hand or read by an optical scanner or other counting device. For purposes of this subclause, the term `individual, durable, voter-verified, paper ballot' means a paper ballot marked by the voter by hand or a paper ballot marked through the use of a nontabulating ballot marking device or system, so long as the voter shall have the option to mark his or her ballot by hand.

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

` (III) The voting system shall not preserve the voter-verified paper ballots in any manner that makes it possible, at any time after the ballot has been cast, to associate a voter with the record of the voter's vote without the voter's consent.

` (ii) PRESERVATION AS OFFICIAL RECORD- The individual, durable, voter-verified, paper ballot used in accordance with clause (i) shall constitute the official ballot and shall be preserved and used as the official ballot for purposes of any recount or audit conducted with respect to any election for Federal office in which the voting system is used.

` (iii) MANUAL COUNTING REQUIREMENTS FOR RECOUNTS AND AUDITS- (I) Each paper ballot used pursuant to clause (i) shall be suitable for a manual audit, and shall be counted by hand in any recount or audit conducted with respect to any election for Federal office.

` (II) In the event of any inconsistencies or irregularities between any electronic vote tallies and the vote tallies determined by counting by hand the individual, durable, voter-verified, paper ballots used pursuant to clause (i), and subject to subparagraph (B), the individual, durable, voter-verified, paper ballots shall be the true and correct record of the votes cast.

` (iv) APPLICATION TO ALL BALLOTS- The requirements of this subparagraph shall apply to all ballots cast in elections for Federal office, including ballots cast by absent uniformed services voters and overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act and other absentee voters.

` (B) SPECIAL RULE FOR TREATMENT OF DISPUTES WHEN PAPER BALLOTS HAVE BEEN SHOWN TO BE COMPROMISED-

` (i) IN GENERAL- In the event that--

` (I) there is any inconsistency between any electronic vote tallies and the vote tallies determined by counting by hand the individual, durable, voter-verified, paper ballots used pursuant to subparagraph (A)(i) with respect to any election for Federal office; and

` (II) it is demonstrated by clear and convincing evidence (as determined in accordance with the applicable standards in the jurisdiction involved) in any recount, audit, or contest of the result of the election that the paper ballots have been compromised (by damage or mischief or

otherwise) and that a sufficient number of the ballots have been so compromised that the result of the election could be changed,

the determination of the appropriate remedy with respect to the election shall be made in accordance with applicable State law, except that the electronic tally shall not be used as the exclusive basis for determining the official certified result.

` (ii) RULE FOR CONSIDERATION OF BALLOTS ASSOCIATED WITH EACH VOTING MACHINE- For purposes of clause (i), only the paper ballots deemed compromised, if any, shall be considered in the calculation of whether or not the result of the election could be changed due to the compromised paper ballots.'

(b) Conforming Amendment Clarifying Applicability of Alternative Language Accessibility- Section 301(a)(4) of such Act (42 U.S.C. 15481(a)(4)) is amended by inserting `(including the paper ballots required to be used under paragraph (2))' after `voting system'.

(c) Other Conforming Amendments- Section 301(a)(1) of such Act (42 U.S.C. 15481(a)(1)) is amended--

- (1) in subparagraph (A)(i), by striking `counted' and inserting `counted, in accordance with paragraphs (2) and (3)';
- (2) in subparagraph (A)(ii), by striking `counted' and inserting `counted, in accordance with paragraphs (2) and (3)';
- (3) in subparagraph (A)(iii), by striking `counted' each place it appears and inserting `counted, in accordance with paragraphs (2) and (3)'; and
- (4) in subparagraph (B)(ii), by striking `counted' and inserting `counted, in accordance with paragraphs (2) and (3)'.

SEC. 102. ACCESSIBILITY AND BALLOT VERIFICATION FOR INDIVIDUALS WITH DISABILITIES.

(a) In General- Section 301(a)(3)(B) of the Help America Vote Act of 2002 (42 U.S.C. 15481(a)(3)(B)) is amended to read as follows:

- ` (B)(i) satisfy the requirement of subparagraph (A) through the use of at least one voting system equipped for individuals with disabilities, including nonvisual and enhanced visual accessibility for the blind and visually impaired, and nonmanual and enhanced manual accessibility for the mobility and dexterity impaired, at each polling place; and
- ` (ii) meet the requirements of subparagraph (A) and paragraph (2)(A) by using a system that--

- ` (I) allows the voter to privately and independently verify the permanent paper ballot through the presentation, in accessible form, of the printed or marked vote selections from the same

printed or marked information that would be used for any vote counting or auditing; and

` (II) allows the voter to privately and independently verify and cast the permanent paper ballot without requiring the voter to manually handle the paper ballot; and'.

(b) Specific Requirement of Study, Testing, and Development of Accessible Paper Ballot Verification Mechanisms-

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

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

(B) by inserting after section 246 the following new section:

` SEC. 247. STUDY AND REPORT ON ACCESSIBLE PAPER BALLOT VERIFICATION MECHANISMS.

` (a) Study and Report- The Director of the National Science Foundation shall make grants to not fewer than 3 eligible entities to study, test, and develop accessible paper ballot voting, verification, and casting mechanisms and devices and best practices to enhance the accessibility of paper ballot voting and verification mechanisms for individuals with disabilities, for voters whose primary language is not English, and for voters with difficulties in literacy, including best practices for the mechanisms themselves and the processes through which the mechanisms are used.

` (b) Eligibility- An entity is eligible to receive a grant under this part if it submits to the Director (at such time and in such form as the Director may require) an application containing--

` (1) certifications that the entity shall specifically investigate enhanced methods or devices, including non-electronic devices, that will assist such individuals and voters in marking voter-verified paper ballots and presenting or transmitting the information printed or marked on such ballots back to such individuals and voters, and casting such ballots;

` (2) a certification that the entity shall complete the activities carried out with the grant not later than December 31, 2011; and

` (3) such other information and certifications as the Director may require.

` (c) Availability of Technology- Any technology developed with the grants made under this section shall be treated as non-proprietary and shall be made available to the public, including to manufacturers of voting systems.

` (d) Coordination With Grants for Technology Improvements- The Director shall carry out this section so that the activities carried out with the grants made under subsection (a) are coordinated with the research conducted under the grant program carried out by the Commission under section 271, to the extent that the Director and Commission determine necessary to provide for the advancement of accessible voting technology.

` (e) Authorization of Appropriations- There are authorized to be appropriated to carry out subsection (a) \$5,000,000, to remain available until expended.'

(2) CLERICAL AMENDMENT- The table of contents of such Act is amended--

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

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

` Sec. 247. Study and report on accessible paper ballot verification mechanisms.'

(c) Clarification of Accessibility Standards Under Voluntary Voting System Guidance- In adopting any voluntary guidance under subtitle B of title III of the Help America Vote Act with respect to the accessibility of the paper ballot verification requirements for individuals with disabilities, the Election Assistance Commission shall include and apply the same accessibility standards applicable under the voluntary guidance adopted for accessible voting systems under such subtitle.

(d) Permitting Use of Funds for Protection and Advocacy Systems To Support Actions To Enforce Election-Related Disability Access- Section 292(a) of the Help America Vote Act of 2002 (42 U.S.C. 15462(a)) is amended by striking ` ; except that' and all that follows and inserting a period.

SEC. 103. ADDITIONAL VOTING SYSTEM REQUIREMENTS.

(a) Requirements Described- Section 301(a) of the Help America Vote Act of 2002 (42 U.S.C. 15481(a)) is amended by adding at the end the following new paragraphs:

` (7) PROHIBITING USE OF UNCERTIFIED ELECTION-DEDICATED VOTING SYSTEM TECHNOLOGIES; DISCLOSURE REQUIREMENTS-

` (A) IN GENERAL- A voting system used in an election for Federal office in a State may not at any time during the election contain or use any election-dedicated voting system technology--

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

` (ii) which has not been deposited with an accredited laboratory described in section 231 to be held in escrow and disclosed in accordance with this section.

` (B) REQUIREMENT FOR DISCLOSURE AND LIMITATION ON RESTRICTING DISCLOSURE- An accredited laboratory under section 231 with whom an election-dedicated voting system technology has been deposited shall--

` (i) hold the technology in escrow; and

` (ii) disclose technology and information regarding the technology to another person if--

- ` (I) the person is a qualified person described in subparagraph (C) who has entered into a nondisclosure agreement with respect to the technology which meets the requirements of subparagraph (D); or
- ` (II) the laboratory is permitted or required to disclose the technology to the person under State law, in accordance with the terms and conditions applicable under such law.
- ` (C) QUALIFIED PERSONS DESCRIBED- With respect to the disclosure of election-dedicated voting system technology by a laboratory under subparagraph (B)(ii)(I), a `qualified person' is any of the following:
 - ` (i) A governmental entity with responsibility for the administration of voting and election-related matters for purposes of reviewing, analyzing, or reporting on the technology.
 - ` (ii) A party to pre- or post-election litigation challenging the result of an election or the administration or use of the technology used in an election, including but not limited to election contests or challenges to the certification of the technology, or an expert for a party to such litigation, for purposes of reviewing or analyzing the technology to support or oppose the litigation, and all parties to the litigation shall have access to the technology for such purposes.
 - ` (iii) A person not described in clause (i) or (ii) who reviews, analyzes, or reports on the technology solely for an academic, scientific, technological, or other investigation or inquiry concerning the accuracy or integrity of the technology.
- ` (D) REQUIREMENTS FOR NONDISCLOSURE AGREEMENTS- A nondisclosure agreement entered into with respect to an election-dedicated voting system technology meets the requirements of this subparagraph if the agreement--
 - ` (i) is limited in scope to coverage of the technology disclosed under subparagraph (B) and any trade secrets and intellectual property rights related thereto;
 - ` (ii) does not prohibit a signatory from entering into other nondisclosure agreements to review other technologies under this paragraph;
 - ` (iii) exempts from coverage any information the signatory lawfully obtained from another source or any information in the public domain;
 - ` (iv) remains in effect for not longer than the life of any trade secret or other intellectual property right related thereto;
 - ` (v) prohibits the use of injunctions barring a signatory from carrying out any activity authorized under subparagraph (C), including injunctions limited to the period prior to a trial involving the technology;

- ` (vi) is silent as to damages awarded for breach of the agreement, other than a reference to damages available under applicable law;
- ` (vii) allows disclosure of evidence of crime, including in response to a subpoena or warrant;
- ` (viii) allows the signatory to perform analyses on the technology (including by executing the technology), disclose reports and analyses that describe operational issues pertaining to the technology (including vulnerabilities to tampering, errors, risks associated with use, failures as a result of use, and other problems), and describe or explain why or how a voting system failed or otherwise did not perform as intended; and
- ` (ix) provides that the agreement shall be governed by the trade secret laws of the applicable State.

` (E) ELECTION-DEDICATED VOTING SYSTEM TECHNOLOGY DEFINED-
For purposes of this paragraph:

` (i) IN GENERAL- The term ` election-dedicated voting system technology' means the following:

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

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

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

` (IV) All executable code produced by the trusted build and any file signatures to validate that it is unmodified.

` (V) Installation devices and software file signatures.

` (ii) EXCLUSION- Such term does not include ` commercial-off-the-shelf' software and hardware defined under the 2005 voluntary voting system guidelines adopted by the Commission under section 222.

` (8) PROHIBITION OF USE OF WIRELESS COMMUNICATIONS DEVICES IN SYSTEMS OR DEVICES- No system or device upon which ballots are programmed or votes are cast or tabulated shall contain, use, or be accessible by any wireless, power-line, or concealed communication device, except that enclosed infrared communications devices which are certified for use in such device by the State and which cannot be used for any remote or wide area communications or used without the knowledge of poll workers shall be permitted.

` (9) PROHIBITING CONNECTION OF SYSTEM TO THE INTERNET-

` (A) IN GENERAL- No system or device upon which ballots are programmed or votes are cast or tabulated shall be connected to the Internet at any time.

` (B) RULE OF CONSTRUCTION- Nothing contained in this paragraph shall be deemed to prohibit the Commission from conducting the studies under section 242 or to conduct other similar studies under any other provision of law in a manner consistent with this paragraph.

` (10) SECURITY STANDARDS FOR VOTING SYSTEMS USED IN FEDERAL ELECTIONS-

` (A) IN GENERAL- No voting system may be used in an election for Federal office unless the manufacturer of such system and the election officials using such system meet the applicable requirements described in subparagraph (B).

` (B) REQUIREMENTS DESCRIBED- The requirements described in this subparagraph are as follows:

` (i) The manufacturer and the election officials shall document the secure chain of custody for the handling of all software, hardware, vote storage media, blank ballots, and completed ballots used in connection with voting systems, and shall make the information available upon request to the Commission.

` (ii) The manufacturer shall disclose to an accredited laboratory under section 231 and to the appropriate election official any information required to be disclosed under paragraph (7).

` (iii) After the appropriate election official has certified the election-dedicated and other voting system software for use in an election, the manufacturer may not--

` (I) alter such software; or

` (II) insert or use in the voting system any software, software patch, or other software modification not certified by the State for use in the election.

` (iv) At the request of the Commission--

` (I) the appropriate election official shall submit information to the Commission regarding the State's compliance with this subparagraph; and

` (II) the manufacturer shall submit information to the Commission regarding the manufacturer's compliance with this subparagraph.

` (C) DEVELOPMENT AND PUBLICATION OF BEST PRACTICES OF SECURE CHAIN OF CUSTODY- Not later than August 1, 2010, the Commission shall develop and make publicly available best practices regarding the requirement of subparagraph (B)(i) and (B)(iii), and in the case of subparagraph (B)(iii), shall include best practices for certifying software patches and minor software modifications under short deadlines.

- ` (D) DISCLOSURE OF SECURE CHAIN OF CUSTODY- The Commission shall make information provided to the Commission under subparagraph (B)(i) available to any person upon request.
- ` (11) DURABILITY AND READABILITY REQUIREMENTS FOR BALLOTS-
 - ` (A) DURABILITY REQUIREMENTS FOR PAPER BALLOTS-
 - ` (i) IN GENERAL- All voter-verified paper ballots required to be used under this Act shall be marked or printed on durable paper.
 - ` (ii) DEFINITION- For purposes of this Act, paper is `durable' if it is capable of withstanding multiple counts and recounts by hand without compromising the fundamental integrity of the ballots, and capable of retaining the information marked or printed on them for the full duration of a retention and preservation period of 22 months.
 - ` (B) READABILITY REQUIREMENTS FOR PAPER BALLOTS MARKED BY BALLOT MARKING DEVICE- All voter-verified paper ballots completed by the voter through the use of a ballot marking device shall be clearly readable by the voter without assistance (other than eyeglasses or other personal vision enhancing devices) and by a scanner or other device equipped for individuals with disabilities.'
- (b) Requiring Laboratories To Meet Standards Prohibiting Conflicts of Interest as Condition of Accreditation for Testing of Voting System Hardware and Software-
 - (1) IN GENERAL- Section 231(b) of such Act (42 U.S.C. 15371(b)) is amended by adding at the end the following new paragraphs:
 - ` (3) PROHIBITING CONFLICTS OF INTEREST; ENSURING AVAILABILITY OF RESULTS-
 - ` (A) IN GENERAL- A laboratory may not be accredited by the Commission for purposes of this section unless--
 - ` (i) the laboratory certifies that the only compensation it receives for the testing carried out in connection with the certification, decertification, and recertification of the manufacturer's voting system hardware and software is the payment made from the Testing Escrow Account under paragraph (4);
 - ` (ii) the laboratory meets such standards as the Commission shall establish (after notice and opportunity for public comment) to prevent the existence or appearance of any conflict of interest in the testing carried out by the laboratory under this section, including standards to ensure that the laboratory does not have a financial interest in the manufacture, sale, and distribution of voting system hardware and software, and is sufficiently independent from other persons with such an interest;
 - ` (iii) the laboratory certifies that it will permit an expert designated by the Commission or by the State requiring

certification of the system being tested to observe any testing the laboratory carries out under this section; and

` (iv) the laboratory, upon completion of any testing carried out under this section, discloses the test protocols, results, and all communication between the laboratory and the manufacturer to the Commission.

` (B) AVAILABILITY OF RESULTS- Upon receipt of information under subparagraph (A), the Commission shall make the information available promptly to election officials and the public.

` (4) PROCEDURES FOR CONDUCTING TESTING; PAYMENT OF USER FEES FOR COMPENSATION OF ACCREDITED LABORATORIES-

` (A) ESTABLISHMENT OF ESCROW ACCOUNT- The Commission shall establish an escrow account (to be known as the `Testing Escrow Account') for making payments to accredited laboratories for the costs of the testing carried out in connection with the certification, decertification, and recertification of voting system hardware and software.

` (B) SCHEDULE OF FEES- In consultation with the accredited laboratories, the Commission shall establish and regularly update a schedule of fees for the testing carried out in connection with the certification, decertification, and recertification of voting system hardware and software, based on the reasonable costs expected to be incurred by the accredited laboratories in carrying out the testing for various types of hardware and software.

` (C) REQUESTS AND PAYMENTS BY MANUFACTURERS- A manufacturer of voting system hardware and software may not have the hardware or software tested by an accredited laboratory under this section unless--

` (i) the manufacturer submits a detailed request for the testing to the Commission; and

` (ii) the manufacturer pays to the Commission, for deposit into the Testing Escrow Account established under subparagraph (A), the applicable fee under the schedule established and in effect under subparagraph (B).

` (D) SELECTION OF LABORATORY- Upon receiving a request for testing and the payment from a manufacturer required under subparagraph (C), the Commission shall select, from all laboratories which are accredited under this section to carry out the specific testing requested by the manufacturer, an accredited laboratory to carry out the testing.

` (E) PAYMENTS TO LABORATORIES- Upon receiving a certification from a laboratory selected to carry out testing pursuant to subparagraph (D) that the testing is completed, along with a copy of the results of the test as required under paragraph (3)(A)(iv), the

Commission shall make a payment to the laboratory from the Testing Escrow Account established under subparagraph (A) in an amount equal to the applicable fee paid by the manufacturer under subparagraph (C)(ii).

` (5) DISSEMINATION OF ADDITIONAL INFORMATION ON ACCREDITED LABORATORIES-

` (A) INFORMATION ON TESTING- Upon completion of the testing of a voting system under this section, the Commission shall promptly disseminate to the public the identification of the laboratory which carried out the testing.

` (B) INFORMATION ON STATUS OF LABORATORIES- The Commission shall promptly notify Congress, the chief State election official of each State, and the public whenever--

` (i) the Commission revokes, terminates, or suspends the accreditation of a laboratory under this section;

` (ii) the Commission restores the accreditation of a laboratory under this section which has been revoked, terminated, or suspended; or

` (iii) the Commission has credible evidence of significant security failure at an accredited laboratory.'.

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

(A) in subsection (a)(1), by striking `testing, certification,' and all that follows and inserting the following: `testing of voting system hardware and software by accredited laboratories in connection with the certification, decertification, and recertification of the hardware and software for purposes of this Act.';

(B) in subsection (a)(2), by striking `testing, certification,' and all that follows and inserting the following: `testing of its voting system hardware and software by the laboratories accredited by the Commission under this section in connection with certifying, decertifying, and recertifying the hardware and software.';

(C) in subsection (b)(1), by striking `testing, certification, decertification, and recertification' and inserting `testing'; and

(D) in subsection (d), by striking `testing, certification, decertification, and recertification' each place it appears and inserting `testing'.

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

(4) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Election Assistance Commission such sums as may be

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

(c) Grants for Research on Development of Election-Dedicated Voting System Software-

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

` 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.

` (a) In General- The Director of the National Science Foundation (hereafter in this part referred to as the *` Director'*) shall make grants to not fewer than 3 eligible entities to conduct research on the development of election-dedicated voting system software.

` (b) Eligibility- An entity is eligible to receive a grant under this part if it submits to the Director (at such time and in such form as the Director may require) an application containing--

` (1) certifications regarding the benefits of operating voting systems on election-dedicated software which is easily understandable and which is written exclusively for the purpose of conducting elections;

` (2) certifications that the entity will use the funds provided under the grant to carry out research on how to develop voting systems that run on election-dedicated software and that will meet the applicable requirements for voting systems under title III; and

` (3) such other information and certifications as the Director may require.

` (c) Availability of Technology- Any technology developed with the grants made under this section shall be treated as non-proprietary and shall be made available to the public, including to manufacturers of voting systems.

` (d) Authorization of Appropriations- There are authorized to be appropriated for grants under this section \$1,500,000 for each of fiscal years 2010 and 2011, to remain available until expended.'

(2) CLERICAL AMENDMENT- The table of contents of such Act is amended by adding at the end of the items relating to subtitle D of 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.'

SEC. 104. AVAILABILITY OF ADDITIONAL FUNDING TO ENABLE STATES TO MEET COSTS OF REVISED REQUIREMENTS.

(a) Extension of Requirements Payments for Meeting Revised Requirements- Section 257(a) of the Help America Vote Act of 2002 (42 U.S.C. 15407(a)) is amended by adding at the end the following new paragraph:

` (4) For fiscal year 2010, the sum of--

` (A) \$1,000,000,000, except that any funds provided under the authorization made by this subparagraph shall be used by a State only to meet the requirements of title III which are first imposed on the State pursuant to the amendments made by title I of the Voter Confidence and Increased Accessibility Act of 2009, or to otherwise modify or replace its voting systems in response to such amendments; plus

` (B) such sums as may be necessary to enable States to carry out the activities described in subparagraph (A) with respect to requirements which first apply to the regularly scheduled general election for Federal office held in November 2014, except that any funds provided under the authorization made by this subparagraph shall be used by a State only for carrying out these activities.'

(b) Use of Revised Formula for Allocation of Funds- Section 252(b) of such Act (42 U.S.C. 15402(b)) is amended to read as follows:

` (b) State Allocation Percentage Defined-

` (1) IN GENERAL- Except as provided in paragraph (2), the `State allocation percentage' for a State is the amount (expressed as a percentage) equal to the quotient of--

` (A) the voting age population of the State (as reported in the most recent decennial census); and

` (B) the total voting age population of all States (as reported in the most recent decennial census).

` (2) SPECIAL RULE FOR PAYMENTS USED TO MEET REQUIREMENTS IMPOSED UNDER VOTER CONFIDENCE AND INCREASED ACCESSIBILITY ACT OF 2009-

` (A) IN GENERAL- In the case of the requirements payment made to a State under the authorization made by section 257(a)(4) for fiscal year 2010 or any fiscal year thereafter, the `State allocation percentage' for a State is the amount (expressed as a percentage) equal to the quotient of--

` (i) the sum of the number of noncompliant precincts in the State and 50 percent of the number of partially noncompliant precincts in the State; and

` (ii) the sum of the number of noncompliant precincts in all States and 50 percent of the number of partially noncompliant precincts in all States.

` (B) NONCOMPLIANT PRECINCT DEFINED- In this paragraph, a `noncompliant precinct' means any precinct (or equivalent location) within a State for which the voting system used to administer the regularly scheduled general election for Federal office held in November 2008 did not meet either of the requirements described in subparagraph (D).

` (C) PARTIALLY NONCOMPLIANT PRECINCT DEFINED- In this paragraph, a `partially noncompliant precinct' means any precinct (or equivalent location) within a State for which the voting system used to administer the regularly scheduled general election for Federal office held in November 2008 met only one of the requirements described in subparagraph (D).

` (D) REQUIREMENTS DESCRIBED- The requirements described in this subparagraph with respect to a voting system are as follows:

` (i) The primary voting system required the use of durable paper ballots (as described in section 301(a)(2)(A)(i)(I) and 301(a)(11)(A), as amended or added by the Voter Confidence and Increased Accessibility Act of 2009) for every vote cast.

` (ii) The voting system allowed the voter to privately and independently verify the permanent paper ballot through the presentation of the same printed or marked information used for vote counting and auditing and to privately and independently cast the permanent paper ballot without handling the ballot manually.'

(c) Revised Conditions for Receipt of Funds- Section 253 of such Act (42 U.S.C. 15403) is amended--

(1) in subsection (a), by striking `A State is eligible' and inserting `Except as provided in subsection (f), a State is eligible'; and

(2) by adding at the end the following new subsection:

` (f) Special Rule for Payments Used To Meet Requirements Imposed Under Voter Confidence and Increased Accessibility Act of 2009-

` (1) IN GENERAL- Notwithstanding any other provision of this part, a State is eligible to receive a requirements payment under the authorization made by section 257(a)(4) for fiscal year 2010 or any fiscal year thereafter if, not later than 90 days after the date of the enactment of the Voter Confidence and Increased Accessibility Act of 2009, the chief executive officer of the State, or designee, in consultation and coordination with the chief State election official--

` (A) certifies to the Commission the number of noncompliant and partially noncompliant precincts in the State (as defined in section 252(b)(2));

` (B) certifies to the Commission that the State will reimburse each unit of local government in the State for any costs the unit incurs in carrying out the activities for which the payment may be used; and

` (C) files a statement with the Commission describing the State's need for the payment and how the State will use the payment to meet the requirements of title III (in accordance with the limitations applicable to the use of the payment under section 257(a)(4)).

` (2) CERTIFICATIONS BY STATES THAT REQUIRE CHANGES TO STATE LAW- In the case of a State that requires State legislation to carry out any activity covered by any certification submitted under this subsection, the State shall be permitted to make the certification notwithstanding that the legislation has not been enacted at the time the certification is submitted and such State shall submit an additional certification once such legislation is enacted.'

(d) Permitting Use of Funds for Reimbursement for Costs Previously Incurred- Section 251(c)(1) of such Act (42 U.S.C. 15401(c)(1)) is amended by striking the period at the end and inserting the following: `, or as a reimbursement for any costs incurred after November 2004 in meeting the requirements of title III which are imposed pursuant to the amendments made by title I of the Voter Confidence and Increased Accessibility Act of 2009 or in otherwise upgrading or replacing voting systems in a manner consistent with such amendments (so long as the voting systems meet any of the requirements that apply with respect to elections for Federal office held in 2014 and each succeeding year).'

(e) Rule of Construction Regarding States Receiving Other Funds for Replacing Punch Card, Lever, or Other Voting Machines- Nothing in the amendments made by this section or in any other provision of the Help America Vote Act of 2002 may be construed to prohibit a State which received or was authorized to receive a payment under title I or II of such Act for replacing punch card, lever, or other voting machines from receiving or using any funds which are made available under the amendments made by this section.

(f) Rule of Construction Regarding Use of Funds Received in Prior Years-

(1) IN GENERAL- Nothing contained in this Act or the Help America Vote Act of 2002 may be construed to prohibit a State from using funds received under title I or II of the Help America Vote Act of 2002 to purchase or acquire by other means a voting system that meets the requirements of paragraphs (2) and (3) of section 301 of the Help America Vote Act of 2002 (as amended by this Act) in order to replace voting systems purchased with funds received under the Help America Vote Act of 2002 that do not meet such requirements.

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

(g) Effective Date- The amendments made by this section shall apply with respect to fiscal years beginning with fiscal year 2010.

SEC. 105. EFFECTIVE DATE FOR NEW REQUIREMENTS.

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

`(d) Effective Date-

`(1) IN GENERAL- Except as provided in paragraph (2), each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.

`(2) SPECIAL RULE FOR CERTAIN REQUIREMENTS-

`(A) IN GENERAL- Except as provided in subparagraphs (B) and (C), the requirements of this section which are first imposed on a State and jurisdiction pursuant to the amendments made by title I of the Voter Confidence and Increased Accessibility Act of 2009 shall apply with respect to voting systems used for the regularly scheduled general election for Federal office held in November 2010 and each succeeding election for Federal office.

`(B) DELAY FOR JURISDICTIONS USING CERTAIN PAPER RECORD PRINTERS OR CERTAIN SYSTEMS USING OR PRODUCING VOTER-VERIFIABLE PAPER RECORDS IN 2008-

`(i) DELAY- In the case of a jurisdiction described in clause (ii), subparagraph (A) shall apply to a voting system in the jurisdiction as if the reference in such subparagraph to 'the regularly scheduled general election for Federal office held in November 2010 and each succeeding election for Federal office' were a reference to 'elections for Federal office occurring during 2014 and each succeeding year', but only with respect to the following requirements of this section:

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

`(II) Paragraph (3)(B)(ii) (I) and (II) of subsection (a) (relating to access to verification from and casting of the durable paper ballot).

`(III) Paragraph (11) of subsection (a) (relating to durability and readability requirements for ballots).

`(ii) JURISDICTIONS DESCRIBED- A jurisdiction described in this clause is a jurisdiction--

`(I) which used voter verifiable paper record printers attached to direct recording electronic voting machines, or which used other voting systems that used or produced paper records of the vote verifiable by voters but that are not in compliance with paragraphs (2)(A)(i)(I), (3)(B)(ii)

(I) and (II), and (11) of subsection (a) (as amended or added by the Voter Confidence and Increased Accessibility Act of 2009), for the administration of the regularly scheduled general election for Federal office held in November 2008; and

` (II) which will continue to use such printers or systems for the administration of elections for Federal office held in years before 2014.

` (iii) MANDATORY AVAILABILITY OF PAPER BALLOTS AT POLLING PLACES USING GRANDFATHERED PRINTERS AND SYSTEMS-

` (I) REQUIRING BALLOTS TO BE OFFERED AND PROVIDED- The appropriate election official at each polling place that uses a printer or system described in clause (ii)(I) for the administration of elections for Federal office shall offer each individual who is eligible to cast a vote in the election at the polling place the opportunity to cast the vote using a blank pre-printed paper ballot which the individual may mark by hand and which is not produced by the direct recording electronic voting machine or other such system. The official shall provide the individual with the ballot and the supplies necessary to mark the ballot, and shall ensure (to the greatest extent practicable) that the waiting period for the individual to cast a vote is the lesser of 30 minutes or the average waiting period for an individual who does not agree to cast the vote using such a paper ballot under this clause.

` (II) TREATMENT OF BALLOT- Any paper ballot which is cast by an individual under this clause shall be counted and otherwise treated as a regular ballot for all purposes (including by incorporating it into the final unofficial vote count (as defined by the State) for the precinct) and not as a provisional ballot, unless the individual casting the ballot would have otherwise been required to cast a provisional ballot.

` (III) POSTING OF NOTICE- The appropriate election official shall ensure there is prominently displayed at each polling place a notice that describes the obligation of the official to offer individuals the opportunity to cast votes using a pre-printed blank paper ballot.

` (IV) TRAINING OF ELECTION OFFICIALS- The chief State election official shall ensure that election officials at polling places in the State are aware of the requirements of this clause, including the requirement to display a notice under

subclause (III), and are aware that it is a violation of the requirements of this title for an election official to fail to offer an individual the opportunity to cast a vote using a blank pre-printed paper ballot.

`(V) PERIOD OF APPLICABILITY- The requirements of this clause apply only during the period in which the delay is in effect under clause (i).

`(C) SPECIAL RULE FOR JURISDICTIONS USING CERTAIN NONTABULATING BALLOT MARKING DEVICES- In the case of a jurisdiction which uses a nontabulating ballot marking device which automatically deposits the ballot into a privacy sleeve, subparagraph (A) shall apply to a voting system in the jurisdiction as if the reference in such subparagraph to `the regularly scheduled general election for Federal office held in November 2010 and each succeeding election for Federal office' were a reference to `elections for Federal office occurring during 2014 and each succeeding year', but only with respect to paragraph (3)(B)(ii)(II) of subsection (a) (relating to nonmanual casting of the durable paper ballot).'

TITLE II--ENHANCEMENT OF ENFORCEMENT

SEC. 201. ENHANCEMENT OF ENFORCEMENT OF HELP AMERICA VOTE ACT OF 2002.

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

(1) by striking `The Attorney General' and inserting `(a) In General- The Attorney General'; and

(2) by adding at the end the following new subsections:

`(b) Filing of Complaints by Aggrieved Persons-

`(1) IN GENERAL- A person who is aggrieved by a violation of section 301, 302, or 303 which has occurred, is occurring, or is about to occur may file a written, signed, notarized complaint with the Attorney General describing the violation and requesting the Attorney General to take appropriate action under this section. The Attorney General shall immediately provide a copy of a complaint filed under the previous sentence to the entity responsible for administering the State-based administrative complaint procedures described in section 402(a) for the State involved.

`(2) RESPONSE BY ATTORNEY GENERAL- The Attorney General shall respond to each complaint filed under paragraph (1), in accordance with procedures established by the Attorney General that require responses and determinations to be made within the same (or shorter) deadlines which apply to a State under the State-based administrative complaint procedures described in section 402(a)(2). The Attorney General shall immediately provide a copy of the response made under the previous sentence to the

entity responsible for administering the State-based administrative complaint procedures described in section 402(a) for the State involved.

` (c) Availability of Private Right of Action- Any person who is authorized to file a complaint under subsection (b)(1) (including any individual who seeks to enforce the individual's right to a voter-verified paper ballot, the right to have the voter-verified paper ballot counted in accordance with this Act, or any other right under subtitle A of title III) may file an action under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) to enforce the uniform and nondiscriminatory election technology and administration requirements under sections 301, 302, and 303.

` (d) No Effect on State Procedures- Nothing in this section may be construed to affect the availability of the State-based administrative complaint procedures required under section 402 to any person filing a complaint under this subsection.'.

TITLE III--REQUIREMENT FOR MANDATORY MANUAL AUDITS BY HAND COUNT

SEC. 301. MANDATORY MANUAL AUDITS.

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

` Subtitle C--Mandatory Manual Audits

` SEC. 321. REQUIRING AUDITS OF RESULTS OF ELECTIONS.

` (a) Requiring Audits-

` (1) IN GENERAL- In accordance with this subtitle, each State shall administer, without advance notice to the precincts or alternative audit units selected, audits of the results of all elections for Federal office held in the State (and, at the option of the State or jurisdiction involved, of elections for State and local office held at the same time as such election) consisting of random hand counts of the voter-verified paper ballots required to be used and preserved pursuant to section 301(a)(2).

` (2) EXCEPTION FOR CERTAIN ELECTIONS- A State shall not be required to administer an audit of the results of an election for Federal office under this subtitle if the winning candidate in the election--

` (A) had no opposition on the ballot; or

` (B) received 80 percent or more of the total number of votes cast in the election, as determined on the basis of the final unofficial vote count.

` (b) Determination of Entity Conducting Audits; Application of GAO Independence Standards- The State shall administer audits under this subtitle through an entity selected for such purpose by the State in accordance with such criteria as the State considers appropriate consistent with the requirements of this subtitle,

except that the entity must meet the general standards established by the Comptroller General and as set forth in the Comptroller General's Government Auditing Standards to ensure the independence (including, except as provided under section 323(b), the organizational independence) of entities performing financial audits, attestation engagements, and performance audits.

`(c) References to Election Auditor- In this subtitle, the term `Election Auditor' means, with respect to a State, the entity selected by the State under subsection (b).

`SEC. 322. NUMBER OF BALLOTS COUNTED UNDER AUDIT.

`(a) In General- Except as provided in subsection (b), the number of voter-verified paper ballots which will be subject to a hand count administered by the Election Auditor of a State under this subtitle with respect to an election shall be determined as follows:

`(1) In the event that the unofficial count as described in section 323(a)(1) reveals that the margin of victory between the two candidates receiving the largest number of votes in the election is less than 1 percent of the total votes cast in that election, the hand counts of the voter-verified paper ballots shall occur in at least 10 percent of all precincts or equivalent locations (or alternative audit units used in accordance with the method provided for under subsection (b)) in the Congressional district involved (in the case of an election for the House of Representatives) or the State (in the case of any other election for Federal office).

`(2) In the event that the unofficial count as described in section 323(a)(1) reveals that the margin of victory between the two candidates receiving the largest number of votes in the election is greater than or equal to 1 percent but less than 2 percent of the total votes cast in that election, the hand counts of the voter-verified paper ballots shall occur in at least 5 percent of all precincts or equivalent locations (or alternative audit units used in accordance with the method provided for under subsection (b)) in the Congressional district involved (in the case of an election for the House of Representatives) or the State (in the case of any other election for Federal office).

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

`(b) Use of Alternative Mechanism-

` (1) PERMITTING USE OF ALTERNATIVE MECHANISM- Notwithstanding subsection (a), a State may adopt and apply an alternative mechanism to determine the number of voter-verified paper ballots which will be subject to the hand counts required under this subtitle with respect to an election, so long as the alternative mechanism uses the voter-verified paper ballots to conduct the audit and the National Institute of Standards and Technology determines that the alternative mechanism is in accordance with the principles set forth in paragraph (2).

` (2) PRINCIPLES FOR APPROVAL- In approving an alternative mechanism under paragraph (1), the National Institute of Standards and Technology shall ensure that the audit procedure will have the property that for each election--

` (A) the alternative mechanism will be at least as statistically effective in ensuring the accuracy of the election results as the procedures under this subtitle; or

` (B) the reported election outcome will have at least a 95 percent chance of being consistent with the election outcome that would be obtained by a full recount.

` (3) DEADLINE FOR RESPONSE- The Director of the National Institute of Standards and Technology shall make a determination regarding a State's request to approve an alternative mechanism under paragraph (1) not later than 30 days after receiving the State's request.

` SEC. 323. PROCESS FOR ADMINISTERING AUDITS.

` (a) In General- The Election Auditor of a State shall administer an audit under this section of the results of an election in accordance with the following procedures:

` (1) Within 24 hours after the State announces the final unofficial vote count (as defined by the State) in each precinct in the State, the Election Auditor shall--

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

` (B) with respect to votes cast at the precinct or equivalent location on or before the date of the election (other than provisional ballots described in paragraph (2)), begin to administer the hand count of the votes on the voter-verified paper ballots required to be used and preserved under section 301(a)(2)(A) and the comparison of the count of the votes on those ballots with the final unofficial count of such votes as announced by the State.

` (2) With respect to votes cast other than at the precinct on the date of the election (other than votes cast before the date of the election described in

paragraph (2)) or votes cast by provisional ballot on the date of the election which are certified and counted by the State on or after the date of the election, including votes cast by absent uniformed services voters and overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act, the Election Auditor shall administer the hand count of the votes on the applicable voter-verified paper ballots required to be produced and preserved under section 301(a)(2)(A) and the comparison of the count of the votes on those ballots with the final unofficial count of such votes as announced by the State.

` (b) Use of Personnel- In administering the audits, the Election Auditor may utilize the services of the personnel of the State or jurisdiction, including election administration personnel and poll workers, without regard to whether or not the personnel have professional auditing experience.

` (c) Location- The Election Auditor shall administer an audit of an election--

` (1) at the location where the ballots cast in the election are stored and counted after the date of the election or such other appropriate and secure location agreed upon by the Election Auditor and the individual that is responsible under State law for the custody of the ballots; and

` (2) in the presence of the personnel who under State law are responsible for the custody of the ballots.

` (d) Special Rule in Case of Delay in Reporting Absentee Vote Count- In the case of a State in which the final count of absentee and provisional votes is not announced until after the date of the election, the Election Auditor shall initiate the process described in subsection (a) for administering the audit not later than 24 hours after the State announces the final unofficial vote count for the votes cast at the precinct or equivalent location on or before the date of the election, and shall initiate the administration of the audit of the absentee and provisional votes pursuant to subsection (a)(2) not later than 24 hours after the State announces the final unofficial count of such votes.

` (e) Additional Audits if Cause Shown-

` (1) IN GENERAL- If the Election Auditor finds that any of the hand counts administered under this section do not match the final unofficial tally of the results of an election, the Election Auditor shall administer hand counts under this section of such additional precincts (or alternative audit units) as the Election Auditor considers appropriate to resolve any concerns resulting from the audit and ensure the accuracy of the election results.

` (2) ESTABLISHMENT AND PUBLICATION OF PROCEDURES GOVERNING ADDITIONAL AUDITS- Not later than August 1, 2010, each State shall establish and publish procedures for carrying out the additional audits under this subsection, including the means by which the State shall resolve any concerns resulting from the audit with finality and ensure the accuracy of the election results.

` (f) Public Observation of Audits- Each audit conducted under this section shall be conducted in a manner that allows public observation of the entire process.

SEC. 324. SELECTION OF PRECINCTS.

(a) In General- Except as provided in subsection (c), the selection of the precincts or alternative audit units in the State in which the Election Auditor of the State shall administer the hand counts under this subtitle shall be made by the Election Auditor on a random basis, in accordance with procedures adopted by the National Institute of Standards and Technology, except that at least one precinct shall be selected at random in each county, with additional precincts selected by the Election Auditor at the Auditor's discretion.

(b) Public Selection- The random selection of precincts under subsection (a) shall be conducted in public, at a time and place announced in advance.

(c) Mandatory Selection of Precincts Established Specifically For Absentee Ballots- If a State does not sort absentee ballots by precinct and include those ballots in the hand count with respect to that precinct, the State shall create absentee ballot precincts or audit units which are of similar size to the average precinct or audit unit in the jurisdiction being audited, and shall include those absentee precincts or audit units among the precincts in the State in which the Election Auditor shall administer the hand counts under this subtitle.

(d) Deadline for Adoption of Procedures by Commission- The National Institute of Standards and Technology shall adopt the procedures described in subsection (a) not later than March 31, 2010, and shall publish them in the Federal Register upon adoption.

SEC. 325. PUBLICATION OF RESULTS.

(a) Submission to Commission- As soon as practicable after the completion of an audit under this subtitle, the Election Auditor of a State shall submit to the Commission the results of the audit, and shall include in the submission a comparison of the results of the election in the precinct as determined by the Election Auditor under the audit and the final unofficial vote count in the precinct as announced by the State and all undervotes, overvotes, blank ballots, and spoiled, voided, or cancelled ballots, as well as a list of any discrepancies discovered between the initial, subsequent, and final hand counts administered by the Election Auditor and such final unofficial vote count and any explanation for such discrepancies, broken down by the categories of votes described in paragraphs (1)(B) and (2) of section 323(a).

(b) Publication by Commission- Immediately after receiving the submission of the results of an audit from the Election Auditor of a State under subsection (a), the Commission shall publicly announce and publish the information contained in the submission.

(c) Delay in Certification of Results by State-

(1) PROHIBITING CERTIFICATION UNTIL COMPLETION OF AUDITS- No State may certify the results of any election which is subject to an audit under this subtitle prior to--

- ` (A) to the completion of the audit (and, if required, any additional audit conducted under section 323(e)(1)) and the announcement and submission of the results of each such audit to the Commission for publication of the information required under this section; and
- ` (B) the completion of any procedure established by the State pursuant to section 323(e)(2) to resolve discrepancies and ensure the accuracy of results.

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

` SEC. 326. PAYMENTS TO STATES.

` (a) Payments For Costs of Conducting Audits- In accordance with the requirements and procedures of this section, the Commission shall make a payment to a State to cover the costs incurred by the State in carrying out this subtitle with respect to the elections that are the subject of the audits conducted under this subtitle.

` (b) Certification of Compliance and Anticipated Costs-

` (1) CERTIFICATION REQUIRED- In order to receive a payment under this section, a State shall submit to the Commission, in such form as the Commission may require, a statement containing--

` (A) a certification that the State will conduct the audits required under this subtitle in accordance with all of the requirements of this subtitle;

` (B) a notice of the reasonable costs incurred or the reasonable costs anticipated to be incurred by the State in carrying out this subtitle with respect to the elections involved; and

` (C) such other information and assurances as the Commission may require.

` (2) AMOUNT OF PAYMENT- The amount of a payment made to a State under this section shall be equal to the reasonable costs incurred or the reasonable costs anticipated to be incurred by the State in carrying out this subtitle with respect to the elections involved, as set forth in the statement submitted under paragraph (1).

` (3) TIMING OF NOTICE- The State may not submit a notice under paragraph (1) until candidates have been selected to appear on the ballot for

all of the elections for Federal office which will be the subject of the audits involved.

` (c) Timing of Payments- The Commission shall make the payment required under this section to a State not later than 30 days after receiving the notice submitted by the State under subsection (b).

` (d) Recoupment of Overpayments- No payment may be made to a State under this section unless the State agrees to repay to the Commission the excess (if any) of--

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

` (2) the actual costs incurred by the State in carrying out this subtitle with respect to the elections involved.

` (e) Authorization of Appropriations- There are authorized to be appropriated to the Commission for fiscal year 2010 and each succeeding fiscal year \$100,000,000 for payments under this section.

` SEC. 327. EXCEPTION FOR ELECTIONS SUBJECT TO RECOUNT UNDER STATE LAW PRIOR TO CERTIFICATION.

` (a) Exception- This subtitle does not apply to any election for which a recount under State law will commence prior to the certification of the results of the election, including but not limited to a recount required automatically because of the margin of victory between the 2 candidates receiving the largest number of votes in the election, but only if each of the following applies to the recount:

` (1) The recount commences prior to the determination and announcement by the Election Auditor under section 323(a)(1) of the precincts in the State in which it will administer the audits under this subtitle.

` (2) If the recount would apply to fewer than 100 percent of the ballots cast in the election--

` (A) the number of ballots counted will be at least as many as would be counted if an audit were conducted with respect to the election in accordance with this subtitle; and

` (B) the selection of the precincts in which the recount will be conducted will be made in accordance with the random selection procedures applicable under section 324.

` (3) The recount for the election meets the requirements of section 323(f) (relating to public observation).

` (4) The State meets the requirements of section 325 (relating to the publication of results and the delay in the certification of results) with respect to the recount.

` (b) Clarification of Effect on Other Requirements- Nothing in this section may be construed to waive the application of any other provision of this Act to any election (including the requirement set forth in section 301(a)(2) that the voter verified

paper ballots serve as the vote of record and shall be counted by hand in all audits and recounts, including audits and recounts described in this subtitle).

SEC. 328. EFFECTIVE DATE.

This subtitle shall apply with respect to elections for Federal office beginning with the regularly scheduled general elections held in November 2010.'

SEC. 302. AVAILABILITY OF ENFORCEMENT UNDER HELP AMERICA VOTE ACT OF 2002.

Section 401 of such Act (42 U.S.C. 15511), as amended by section 201, is amended--

- (1) in subsection (a), by striking the period at the end and inserting the following: ', or the requirements of subtitle C of title III.';
- (2) in subsection (b)(1), by striking '303' and inserting '303, or subtitle C of title III,'; and
- (3) in subsection (c)--
 - (A) by striking 'subtitle A' and inserting 'subtitles A or C', and
 - (B) by striking the period at the end and inserting the following: ', or the requirements of subtitle C of title III.'

SEC. 303. GUIDANCE ON BEST PRACTICES FOR ALTERNATIVE AUDIT MECHANISMS.

(a) In General- Not later than May 1, 2010, the Director of the National Institute for Standards and Technology shall establish guidance for States that wish to establish alternative audit mechanisms under section 322(b) of the Help America Vote Act of 2002 (as added by section 301). Such guidance shall be based upon scientifically and statistically reasonable assumptions for the purpose of creating an alternative audit mechanism that will be consistent with the principles for approval described in section 322(b)(2) of such Act (as so added).

(b) Authorization of Appropriations- There are authorized to be appropriated to carry out subsection (a) \$100,000, to remain available until expended.

SEC. 304. CLERICAL AMENDMENT.

The table of contents of such Act is amended by adding at the end of the items 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.'

TITLE IV--REPEAL OF EXEMPTION OF ELECTION ASSISTANCE COMMISSION FROM CERTAIN GOVERNMENT CONTRACTING REQUIREMENTS

SEC. 401. REPEAL OF EXEMPTION OF ELECTION ASSISTANCE COMMISSION FROM CERTAIN GOVERNMENT CONTRACTING REQUIREMENTS.

- (a) In General- Section 205 of the Help America Vote Act of 2002 (42 U.S.C. 15325) is amended by striking subsection (e).
- (b) Effective Date- The amendment made by subsection (a) shall apply with respect to contracts entered into by the Election Assistance Commission on or after the date of the enactment of this Act.

TITLE V--EFFECTIVE DATE

SEC. 501. EFFECTIVE DATE.

Except as otherwise provided, this Act and the amendments made by this Act shall apply with respect to the regularly scheduled general election for Federal office in November 2010 and each succeeding election for Federal office.

END