

Proposed Amendments to HR 811

To amend the Voter Confidence and Increased Accessibility Act of 2007 (HR 811) to accomplish the following:

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(a) require the voter-verified permanent paper ballot, defined under such Act as the official ballot for audits and recounts, to be also defined as the official ballot for the initial count.	3, 4, 6, 7
(b) limit the extension of the Election Assistance Commission under such Act and increase the accountability of the EAC to Congress and the public.	13
(c) remove the requirement of such Act for non-existent “text conversion” software as the only method of providing ballot verifiability for people with disabilities; allow innovation in verification technology for people with special needs.	5, 8
(d) increase the disclosure requirement of such Act to include system documentation, change the disclosure requirements for Commercial Off-the-Shelf (COTS) software to be governed by a non-disclosure agreement.	6
(e) allow a state oversight body, other than the chief auditor, to manage state audits as defined in such Act.	13
(f) provide for an affirmative private right of action to remedy a violation of section 301, 302, 303, or subtitle C of title III.	14
(g) require audits defined in such Act to commence immediately after the random selection of audit units	15
(h) extend the Internet-connection prohibition of such Act to include all components of all voting systems.	7
(i) eliminate the loophole in such Act that allows machine recounts of elections for Federal office.	17

110th CONGRESS

1st Session

H. R. 811

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

February 5, 2007

Mr. HOLT (for himself, Mr. TOM DAVIS of Virginia, Mr. WEXLER, Mr. EMANUEL, Mr. PETRI, Mr. WOLF, Mr. LEWIS of Georgia, Mr. LANGEVIN, Mr. COOPER, Mrs. JONES of Ohio, Mr. CLAY, Mr. SHAYS, Ms. KAPTUR, Mr. ENGLISH of Pennsylvania, Mr. HASTINGS of Florida, Mr. RAMSTAD, Mr. MEEK of Florida, Mr. ISSA, Mr. CUMMINGS, Mrs. BIGGERT, Ms. LEE, Mr. CASTLE, Ms. KILPATRICK of Michigan, Mr. KUHL of New York, Ms. CORRINE BROWN of Florida, Mr. MACK, Mr. SCOTT of Virginia, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ALLEN, Mr. BECERRA, Ms. BERKLEY, Mr. BERMAN, Mr. BERRY, Mr. BISHOP of Georgia, Mr. BLUMENAUER, Mr. BOREN, Mr. BOSWELL, Mr. BOUCHER, Mr. BOYD of Florida, Mr. BRADY of Pennsylvania, Mr. BRALEY of Iowa, Mr. BUTTERFIELD, Mrs. CAPPES, Mr. CARNAHAN, Mr. CHANDLER, Mr. COHEN, Mr. COSTA, Mr. COSTELLO, Mr. COURTNEY, Mr. CROWLEY, Mr. DAVIS of Illinois, Mr. LINCOLN DAVIS of Tennessee, Mrs. DAVIS of California, Mr. DEFAZIO, Ms. DEGETTE, Mr. DELAHUNT, Ms. DELAURO, Mr. DICKS, Mr. DINGELL, Mr. DOGGETT, Mr. DOYLE, Mr. EDWARDS, Mr. ELLISON, Mr. ENGEL, Ms. ESHOO, Mr. ETHERIDGE, Mr. FATTAH, Mr. FILNER, Mr. FORTUNAE6O, Mr. FRANK of Massachusetts, Mrs. GILLIBRAND, Mr. GONZALEZ, Mr. GORDON of Tennessee, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HALL of New York, Ms. HARMAN, Ms. HERSETH, Mr. HIGGINS, Mr. HINCHEY, Ms. HIRONO, Mr. HODES, Mr. HOLDEN, Mr. HONDA, Ms. HOOLEY, Mr. INSLEE, Ms. JACKSON-LEE of Texas, Mr. JEFFERSON, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. JOHNSON of Georgia, Mr. KAGEN, Mr. KENNEDY, Mr. KILDEE, Mr. KIND, Mr. KLEIN of Florida, Mr. KUCINICH, Mr. LANTOS, Mr. LARSEN of Washington, Mr. LOEBSACK, Mrs. LOWEY, Mrs. MCCARTHY of New York, Ms. MCCOLLUM of Minnesota, Mr. MCINTYRE, Mr. MCNULTY, Mrs. MALONEY of New York, Mr. MARSHALL, Mr. MATHESON, Ms. MATSUI, Mr. MELANCON, Mr. MICHAUD, Mr. MILLER of North Carolina, Mr. GEORGE MILLER of California, Mr. MITCHELL, Mr. MOLLOHAN, Mr. MOORE of Kansas, Mr. MORAN of Virginia, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. NADLER, Mrs. NAPOLITANO, Ms. NORTON, Mr. OBERSTAR, Mr. OBEY, Mr. OLVER, Mr. ORTIZ, Mr. PALLONE, Mr. PASTOR, Mr. PAYNE, Mr. PETERSON of Minnesota, Mr. PRICE of North Carolina, Mr. REYES, Mr. ROTHMAN, Ms. ROYBAL-ALLARD, Mr. RUPPERSBERGER, Mr. SALAZAR, Ms. LINDA T. SANCHEZ of California, Ms. LORETTA SANCHEZ of California, Ms. SCHAKOWSKY, Mr. SCHIFF, Ms. SCHWARTZ, Mr. SCOTT of Georgia, Mr. SERRANO, Mr. SHERMAN, Mr. SHULER, Ms. SLAUGHTER, Mr. SMITH of Washington, Ms. SOLIS, Mr. SPRATT, Mr. STARK, Mr. STUPAK, Ms. SUTTON, Mr. TANNER, Mrs. TAUSCHER, Mr. TAYLOR, Mr. TIERNEY, Mr. TOWNS, Mr. UDALL of Colorado, Mr. VAN HOLLEN, Mr. WALZ of Minnesota, Ms. WASSERMAN SCHULTZ, Ms. WATERS, Ms. WATSON, Mr. WAXMAN, Mr. WEINER, Ms. WOOLSEY, Mr. WU, Mr. WYNN, and Mr. ALTMIRE) introduced the following bill; which was referred to the Committee on House Administration

A BILL

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Voter Confidence and Increased Accessibility Act of 2007'.

SEC. 2. PROMOTING ACCURACY, INTEGRITY, AND SECURITY THROUGH VOTER-VERIFIED PERMANENT PAPER BALLOT.

(a) Ballot Verification and Audit Capacity-

(1) 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) BALLOT VERIFICATION AND AUDIT CAPACITY-

`(A) IN GENERAL-

`(i) The voting system shall require the use of or produce an individual voter-verified paper ballot of the voter's vote that shall be created by or made available for inspection and verification by the voter before the voter's vote is cast and counted. [The voter-verified paper ballot shall be the official ballot to be counted in the initial tally and all subsequent tallies.](#) For purposes of this clause, examples of such a ballot include a paper ballot marked by the voter for the purpose of being counted by hand or read by an optical scanner or other similar device, a paper ballot prepared by the voter to be mailed to an election official (whether from a domestic or overseas location), [or](#) a paper ballot created [or marked](#) through the use of a [non-tabulating](#) ballot marking device or system, or a paper ballot produced by a touch screen or other electronic voting machine, so long as in each case the voter is permitted to verify the [paper](#) ballot [in a paper form](#) in accordance with this subparagraph. [Electronic ballots, ballots cast on any medium other than paper, and ballots that are not clearly readable by the naked eye are specifically prohibited from use.](#)

`(ii) The voting system shall provide the voter with an opportunity to correct any error made by the system in the voter-verified paper ballot before the permanent voter-verified paper ballot is preserved in accordance with subparagraph (B)(i).

`(iii) The voting system shall not preserve the voter-verifiable 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.

`(B) MANUAL AUDIT CAPACITY-

`(i) The permanent voter-verified paper ballot produced in accordance with subparagraph (A) shall be [the official ballot with respect to any election for Federal office in which the voting system is used, and shall be](#) preserved –

`(I) in the case of votes cast at the polling place on the date of the election, within the polling place in the manner or method in which all other paper ballots are preserved within such polling place;

`(II) in the case of votes cast at the polling place prior to the date of the election or cast by mail, in a manner which is consistent with the manner employed by the jurisdiction for preserving such ballots in general; or

`(III) in the absence of either such manner or method, in a manner which is consistent with the manner employed by the jurisdiction for preserving paper ballots in general.

`(ii) Each paper ballot produced pursuant to subparagraph (A) shall be suitable for a manual audit equivalent to that of a paper ballot voting system, and shall be counted by hand in any recount or audit conducted with respect to any election for Federal office.

`(iii) In the event of any inconsistencies or irregularities between any electronic vote tallies and the vote tallies determined by counting by hand the individual permanent paper ballots produced pursuant to subparagraph (A), and subject to subparagraph (D), the individual permanent paper ballots shall be the true and correct record of the votes cast ~~and shall be used as the official ballots for purposes of any recount or audit conducted~~ with respect to any election for Federal office in which the voting system is used.

`(C) SPECIAL RULE FOR VOTES CAST BY ABSENT MILITARY AND OVERSEAS VOTERS- In the case of votes cast by absent uniformed services voters and overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act, the ballots cast by such voters shall serve as the permanent paper ballot under subparagraph (A) in accordance with protocols established by the Commission, in consultation with the Secretary of Defense after notice and opportunity for public comment, which preserve the privacy of the voter and are consistent with the requirements of such Act and this Act and are in conformance with paragraph (11). ~~except that to the extent that such protocols permit the use of electronic mail in the delivery or submission of such ballots, paragraph (11) shall not apply with respect to the delivery or submission of the ballots.~~

`(D) SPECIAL RULE FOR TREATMENT OF DISPUTES WHEN PAPER BALLOTS HAVE BEEN SHOWN TO BE COMPROMISED- In the event of any inconsistency between any electronic vote tallies and the vote tallies determined by counting by hand the individual permanent paper ballots produced pursuant to subparagraph (A), any person seeking to show that the electronic vote tally should be given preference in determining the official count for the election shall be required to demonstrate, by clear and convincing evidence, 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 would be changed. For purposes of the previous sentence, the paper ballots associated with each ~~voting tabulating~~ machine shall be considered on a tabulator-by tabulator ~~voting machine by voting machine~~ basis, and only the sets of paper ballots deemed

compromised, if any, shall be considered in the calculation of whether or not the [result of the](#) election would be changed due to the compromised paper ballots.'.

(2) 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 produced under paragraph (2) and the notice required under paragraph (8))' after 'voting system'.

(3) OTHER CONFORMING AMENDMENTS- Section 301(a)(1) of such Act (42 U.S.C. 15481(a)(1)) is amended--

(A) in subparagraph (A)(i), by striking 'counted' and inserting 'counted, in accordance with paragraphs (2) and (3)';

(B) in subparagraph (A)(ii), by striking 'counted' and inserting 'counted, in accordance with paragraphs (2) and (3)';

(C) in subparagraph (A)(iii), as amended by paragraph (2), by striking 'counted' each place it appears and inserting 'counted, in accordance with paragraphs (2) and (3)'; and

(D) in subparagraph (B)(ii), by striking 'counted' and inserting 'counted, in accordance with paragraphs (2) and (3)'.

(b) Accessibility and Ballot Verification for Individuals With Disabilities-

(1) IN GENERAL- Section 301(a)(3)(B) of such Act (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 at each polling place; and

(ii) meet the requirements of subparagraph (A) and paragraph (2)(A) by using a system that allows the voter to privately and independently verify the selections marked on the permanent paper ballot itself."

~~(I) allows the voter to privately and independently verify the content of the permanent paper ballot through the conversion of the printed content into accessible media, and~~

~~(II) ensures that the entire process of ballot verification and vote casting is equipped for individuals with disabilities.!~~

(2) SPECIFIC REQUIREMENT OF STUDY, TESTING, AND DEVELOPMENT OF ACCESSIBLE BALLOT VERIFICATION MECHANISMS-

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

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

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

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

(a) Study and Report- The Director of the National Institute of Standards and Technology shall study, test, and develop best practices to enhance the accessibility of ballot 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. In carrying out this section, the Director shall specifically investigate existing and potential methods or devices that will assist such individuals and voters in creating voter-verified paper ballots and in reading or transmitting the information printed or marked on such ballots back to such individuals and voters.

(b) Deadline- The Director shall complete the requirements of subsection (a) not later than January 1, 2010.

(c) Authorization of Appropriations- There are authorized to be appropriated to carry out subsection (a) \$1,000,000, to remain available until expended.

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

- (i) by redesignating the item relating to section 247 as relating to section 248; and
- (ii) by inserting after the item relating to section 246 the following new item:

SEC. 247. STUDY AND REPORT ON ACCESSIBLE VOTER VERIFICATION MECHANISMS.

(3) 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 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.

(c) Additional Voting System Requirements-

(1) REQUIREMENTS DESCRIBED- Section 301(a) of such Act (42 U.S.C. 15481(a)) is amended by adding at the end the following new paragraphs:

(7) INSTRUCTION OF ELECTION OFFICIALS- Each State shall ensure that all election officials are instructed on the right of any individual who requires assistance to vote by reason of blindness, other disability, or inability to read or write to be given assistance by a person chosen by that individual under section 208 of the Voting Rights Act of 1965.

(8) INSTRUCTION REMINDING VOTERS OF IMPORTANCE OF VERIFYING PAPER BALLOT-

`(A) IN GENERAL- The appropriate election official at each polling place shall cause to be placed in a prominent location in the polling place a notice containing the following statement, in boldface type, large font, and using only upper-case letters: ~~'THE PAPER BALLOT REPRESENTING YOUR VOTE SHALL BE USED FOR THE OFFICIAL TALLY AND SERVE AS THE VOTE OF RECORD IN ALL RECOUNTS AND AUDITS. DO NOT LEAVE THE VOTING BOOTH~~ DO NOT CAST YOUR PAPER BALLOT UNTIL YOU HAVE CONFIRMED THAT IT ACCURATELY RECORDS YOUR VOTE'.

`(B) SYSTEMS FOR INDIVIDUALS WITH DISABILITIES- All voting systems equipped for individuals with disabilities shall transmit by accessible media the statement referred to in subparagraph (A), as well as an explanation of the verification process described in paragraph (3)(B)(ii).

`(9) PROHIBITION OF USE OF UNDISCLOSED SOFTWARE IN VOTING SYSTEMS- No voting system used in an election for Federal office shall at any time contain or use any software not certified by the State for use in the election or any software undisclosed to the State in the certification process. The appropriate election official shall disclose all system documentation and, in electronic form, the source code, object code, and executable representation of the voting system software ~~and firmware~~ firmware, and modified off-the-shelf (MOTS) software to the Commission, including ballot programming files, and the Commission shall make that source code, object code, executable representation, and ballot programming files available for inspection promptly upon request to any person except that the system documentation, source code, object code, and executable representation of unmodified Commercial off-the-shelf (COTS) software shall be disclosed only under confidentiality agreement to persons authorized by the State.

`(10) PROHIBITION OF USE OF WIRELESS COMMUNICATIONS DEVICES IN VOTING SYSTEMS- No voting system shall contain, use, or be accessible by any wireless, power-line, remote, wide area, or concealed communication device at all.

`(11) PROHIBITING CONNECTION OF SYSTEM OR TRANSMISSION OF SYSTEM INFORMATION OVER THE INTERNET. — ~~No component of any voting device upon which votes are cast shall be connected to the Internet at any time~~ No component of any voting system shall be connected, either directly or indirectly, to the Internet at any time."

`(12) 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, and

ballots used in connection with voting systems, and shall make the information available upon request to the Commission.

`(ii) The manufacturer of the software used in the operation of the system shall provide the appropriate election official with updated information regarding the identification of each individual who participated in the writing of the software, including specific information regarding whether the individual has ever been convicted of a crime involving election, accounting, or computer security fraud.

`(iii) The manufacturer shall provide the appropriate election official with the information necessary for the official to provide information to the Commission under paragraph (9).

`(iv) After the appropriate election official has certified the source code, object code, and executable representation of the voting system software for use in an election, the manufacturer may not--

 `(I) alter such codes and representation; or

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

`(v) The appropriate election official shall ensure that all ~~voting machines~~ [tabulating machines](#) and related supplies to be used in the election shall remain secured within storage facilities arranged for by the election official, and shall not be removed from such facilities until such time as they are to be delivered to the relevant polling place and secured at the polling place until used in the election.

`(vi) The manufacturer shall meet standards established by the Commission to prevent the existence or appearance of any conflict of interest with respect to candidates for public office and political parties, including standards to ensure that the manufacturer's officers and directors do not hold positions of authority in any political party or in any partisan political campaign, and shall certify to the Commission not later than January 31 of each even-numbered year that it meets the standards established under this clause.

`(vii) At the request of the Commission, the appropriate election official shall submit information to the Commission regarding the State's compliance with this subparagraph.

`(13) DURABILITY AND READABILITY REQUIREMENTS FOR BALLOTS-

 `(A) DURABILITY REQUIREMENTS FOR PAPER BALLOTS- All voter-verified paper ballots required to be used under this Act (including the emergency paper ballots used under paragraph (14)) shall be marked, printed, or recorded on durable paper of archival quality capable of withstanding multiple counts and recounts without compromising the fundamental integrity of the ballots, and capable of retaining the information marked, printed, or recorded on them for the full duration of the retention and preservation period called for by title III of the Civil Rights Act of 1960 (42 U.S.C. 1974 et seq.) or under applicable State law, whichever is longer.

`(B) READABILITY REQUIREMENTS FOR MACHINE-MARKED OR PRINTED PAPER BALLOTS- All voter-verified paper ballots marked or printed through the use of a marking or printing device shall be clearly readable by the naked eye and ~~by a scanner or other device equipped for voters with disabilities.~~ verifiable by a device equipped for voters with disabilities and minority-language needs.

`(14) PROHIBITING TURNING INDIVIDUALS AWAY FROM POLLING PLACES BECAUSE OF PROBLEMS WITH OR SHORTAGES OF EQUIPMENT, BALLOTS, OR SUPPLIES-

`(A) ENSURING ADEQUATE EQUIPMENT AND SUPPLIES- Each State shall ensure that the voting systems it uses to conduct elections for Federal office are designed in a manner that ensures that no voter will be unable to cast a ballot at a polling place due to a shortage or failure of voting equipment, ballots, or necessary supplies.

`(B) USE OF EMERGENCY PAPER BALLOTS IN CASE OF SYSTEM OR EQUIPMENT FAILURE- In the event of the failure of voting equipment or other circumstance at a polling place that causes a delay, any individual who is waiting at the polling place to cast a ballot in an election for Federal office and who would be delayed due to such failure or other circumstance shall be advised immediately of the individual's right to use an emergency paper ballot, and upon request shall be provided with an emergency paper ballot for the election and the supplies necessary to mark the ballot. Any emergency paper ballot which is cast by an individual under this subparagraph shall be counted and otherwise treated as a regular ballot and not as a provisional ballot, unless the individual casting the ballot would have otherwise been required to cast a provisional ballot if the voting equipment at the polling place had not failed.'.

(2) REQUIRING LABORATORIES TO MEET STANDARDS PROHIBITING CONFLICTS OF INTEREST AS CONDITION OF ACCREDITATION FOR TESTING OF VOTING SYSTEM HARDWARE AND SOFTWARE-

(A) 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 the standards applicable to the manufacturers of voting systems under section 301(a)(11)(B)(vi), together with 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 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 at random, 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)(iii), 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) LABORATORIES WITH ACCREDITATION REVOKED OR SUSPENDED- If the Commission revokes, terminates, or suspends the accreditation of a laboratory under this section, the Commission shall promptly notify Congress, the chief State election official of each State, and the public.

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

(i) 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.';

(ii) 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.';

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

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

(C) DEADLINE FOR ESTABLISHMENT OF STANDARDS AND ESCROW ACCOUNT- 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 described in section 231(b)(4) of such Act (as added by subparagraph (A)) not later than January 1, 2008.

(3) SPECIAL CERTIFICATION OF BALLOT DURABILITY AND READABILITY REQUIREMENTS FOR STATES NOT CURRENTLY USING PAPER BALLOTS- If any of the voting systems used in a State for the regularly scheduled 2006 general elections for Federal office did not operate by having voters cast votes on paper ballots (such as through the use of an optical scan voting system), the State shall certify to the Election Assistance Commission not later than 90 days after the date of the enactment of this Act

that the State will be in compliance with the requirements of section 301(a)(13) of the Help America Vote Act of 2002, as added by paragraph (1), in accordance with the deadline established under this Act, and shall include in the certification the methods by which the State will meet the requirements.

(d) Availability of Additional Funding to Enable States to Meet Costs of Revised Requirements-

(1) 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 2007, \$300,000,000, except that any funds provided under the authorization made by this paragraph 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 section 2 of the Voter Confidence and Increased Accessibility Act of 2007, or to otherwise modify or replace its voting systems in response to such amendments.”

(2) 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 FOR FISCAL YEAR 2007-

“(A) IN GENERAL- In the case of the requirements payment made to a State for fiscal year 2007, the ‘State allocation percentage’ for a State is the amount (expressed as a percentage) equal to the quotient of--

“(i) the number of remedial precincts in the State; and

“(ii) the total number of remedial precincts in all States.

“(B) REMEDIAL PRECINCT DEFINED- In this paragraph, a ‘remedial precinct’ means any precinct (or equivalent location) within the State for which the voting system used to administer the regularly scheduled general election for Federal office held in November 2006--

“(i) did not use paper as the medium for vote casting, or if the system used paper, did not use durable paper of archival quality; or

(ii) did not provide that the entire process of ballot verification was equipped for individuals with disabilities.'

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

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

(B) in paragraph (2), by inserting after 'one-tenth of 1 percent' the following: '(or, in the case of the payment made for fiscal year 2007, one-half of 1 percent)'

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

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

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

(f) Special Rule for Fiscal Year 2007- Notwithstanding any other provision of this part, a State is eligible to receive a requirements payment for fiscal year 2007 if--

(1) not later than 30 days after the date of the enactment of the Voter Confidence and Increased Accessibility Act of 2007, the State certifies to the Commission the number of remedial precincts in the State (as defined in section 252(b)(2)(B)); and

(2) not later than 90 days after the date of the enactment of such Act, the chief executive officer of the State, or designee, in consultation and coordination with the chief State election official, has filed 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)).'

(5) 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 in meeting the requirements of title III which are imposed pursuant to the amendments made by section 2 of the Voter Confidence and Increased Accessibility Act of 2007 or in otherwise modifying or replacing voting systems in response to such amendments.'

(6) RULE OF CONSTRUCTION REGARDING STATES RECEIVING OTHER FUNDS FOR REPLACING PUNCH CARD, LEVER, OR OTHER VOTING MACHINES- Nothing in the amendments made by this subsection 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 subsection.

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

SEC. 3. ENHANCEMENT OF ENFORCEMENT OF HELP AMERICA VOTE ACT OF 2002.

Section 401 of such Act (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.

(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).

(c) Affirmative Private Right of Action - If the Attorney General decides not to pursue, in a timely manner, a complaint filed by an aggrieved person, such aggrieved person has the right, expressly created by this provision, to file a civil action in an appropriate district court of the United States to seek to remedy a violation of section 301, 302, 303, or subtitle C of title III which has occurred, is occurring, or is about to occur. Such an aggrieved person may recover damages and reasonable attorneys fees upon prevailing in such an action.

(d) Clarification of Availability of Private Right of Action via Other Statutes and via the United States Constitution- In addition to the affirmative private right of action created expressly via the above provision, nothing in this section may be construed to prohibit any person from bringing an action under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) (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 an election, or any other right under subtitle A of title III) to enforce the uniform and nondiscriminatory election technology and administration requirements under sections 301, 302, and 303.

(e) 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.'

SEC. 4. EXTENSION OF AUTHORIZATION OF ELECTION ASSISTANCE COMMISSION AND INCREASED OVERSIGHT BY CONGRESS AND THE PUBLIC.

(a) In General. — Section 210 of the Help America Vote Act of 2002 (42 U.S.C. 15330) is amended by striking “each of the fiscal years 2003 through 2005” and inserting “~~each fiscal year beginning with fiscal year 2003~~each of the fiscal years 2003 through 2008, contingent on the Commission's compliance with Section 202(7).”.

(b) Section 202 of the Help America Vote Act of 2002 (42 U.S.C. 15330) is amended by adding the following at the end.

"(7) publishing a report, submitted to Congress, made available to the public, and posted prominently on the Commission's website on the first day of every quarter, detailing the activities and actions of the Commission for the previous quarter, explaining how those activities and actions relate to the fulfillment of the Commission's duties and deadlines under HAVA, and including an appendix quoting complaints the Commission has received from officials and citizens regarding its activities and actions and the Commission's responses to those complaints."

(bc) Effective Date- The amendment made by subsection (a) shall take effect as if included in the enactment of the Help America Vote Act of 2002.

SEC. 5. REQUIREMENT FOR MANDATORY MANUAL AUDITS BY HAND COUNT.

(a) Mandatory Manual Audits by Election Audit Boards- 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 by Election Audit Boards

SEC. 321. ESTABLISHMENT OF ELECTION AUDIT BOARDS.

(a) Establishment- Not later than 60 days before the date of each election for Federal office held in the State, the state election oversight body independent of election administration, or where none exists, the chief auditor of each State shall appoint an Election Audit Board to administer, without advance notice to the precincts selected, random hand counts of the voter-verified paper ballots required to be produced and preserved pursuant to section 301(a)(2) for each such election 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).

(b) Composition-

(1) IN GENERAL- Each political party in the State with a candidate in any of the regularly scheduled elections for Federal office held in the State whose candidates in the most recent regularly scheduled general elections in the State received at least 5% of the aggregate number of all votes cast in such elections, together with any independent candidate who received at least 5% of the aggregate number of all votes cast in the most recent regularly scheduled general elections in the State, shall select a qualified individual for appointment to the Election Audit Board of the State.

(2) UNAFFILIATED MEMBERS- In addition to the individuals serving on the Board pursuant to paragraph (1), the chief auditor of the State shall appoint qualified individuals who are not nominated by any political party or candidate and who are not employees or agents of any political party or candidate to serve on the Board. The number of individuals appointed pursuant to this paragraph shall be sufficient to ensure that the total number of individuals serving on the Board is an odd number not less than 7.

`(3) QUALIFICATIONS- An individual is qualified to be appointed to the Board if the individual has professional experience in carrying out audits on an impartial basis, and does not have any conflict of interest with the manufacturer or vendor of any voting system which was used in any of the elections that will be audited by the Board.

`(4) DIVERSITY IN APPOINTMENTS- In making appointments to the Board, the chief auditor of the State shall (to the greatest extent practicable) ensure that the members of the Board reflect the demographic composition of the voting age population of the State.

`(c) Special Rule For Runoff and Special Elections-

`(1) RUNOFF ELECTIONS- If a runoff election for Federal office is held in the State, the Election Audit Board which was appointed for the initial election which resulted in the runoff election shall serve as the Election Audit Board with respect to the runoff election.

`(2) SPECIAL ELECTIONS- If a special election for Federal office is held in the State (other than a special election held on the same date as the date of a regularly scheduled election for Federal office), the Election Audit Board which was appointed for the most recent regularly scheduled election for Federal office in the State shall serve as the Election Audit Board with respect to the special election.

`(d) Chief Auditor Defined- In this subsection, the `chief auditor' of a State is an official of the State government, who, as designated by the Attorney General of the State and certified by the Attorney General of the State to the Commission, is responsible for conducting annual audits of the operations of the government of the State under the laws or constitution of the State, except that in no case may an individual serve as the chief auditor of a State under this subsection if the individual is the chief State election official.

`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 Audit Board 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 10 percent of all precincts (or equivalent locations) 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 5 percent of all precincts (or equivalent locations) 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 3 percent of all precincts (or equivalent locations) 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- 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 National Institute of Standards and Technology determines that the alternative mechanism will be at least as effective in ensuring the accuracy of the election results and as transparent as the procedure under subsection (a).

`SEC. 323. PROCESS FOR ADMINISTERING AUDITS.

`(a) In General- The Election Audit Board 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 in each precinct in the State, the Board shall determine and then announce the precincts in the State in which it will administer the audits. [The audits shall commence no later than 24 hours after the announcement of specific sample design of the audit.](#)

`(2) 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 (3)), the Board shall administer the hand count of the votes on the paper voter-verified 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.

`(3) 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 Board shall administer the hand count of the applicable voter-verified ballots required to be produced and preserved under section 301(a)(2)(A) and section 301(a)(2)(B) and compare the count it administers with the count of such votes as announced by the State.

`(b) Special Rule in Case of Delay in Reporting Absentee Vote Count- In the case of a State in which, under State law, the final count of absentee and provisional votes is not announced until after the expiration of the 7-day period which begins on the date of the election, the Election Audit Board 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)(3) not later than 24 hours after the State announces the final unofficial count of such votes.

^(c) Additional Audits if Cause Shown-

^(1) IN GENERAL- If the Election Audit Board 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 Board shall administer hand counts under this section of such additional precincts (or equivalent jurisdictions) as the Board considers appropriate to resolve any concerns resulting from the audit and ensure the accuracy of the results.

^(2) ESTABLISHMENT AND PUBLICATION OF PROCEDURES GOVERNING ADDITIONAL AUDITS- Not later than January 1, 2008, 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 results.

^(d) 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 in the State in which the Election Audit Board of the State shall administer the hand counts under this subtitle shall be made by the Board on an entirely random basis using a uniform distribution in which all precincts in a State have an equal chance of being selected, in accordance with such procedures as the Commission determines appropriate, except that--

^(1) at least one precinct shall be selected at random in each county; and

^(2) the Commission shall publish the procedures in the Federal Register prior to the selection of the precincts.

^(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 establishes a separate precinct for purposes of counting the absentee ballots cast in an election and treats all absentee ballots as having been cast in that precinct, and if the state does not make absentee ballots sortable by precinct, the State shall include that precinct among the precincts in the State in which the Election Audit Board shall administer the hand counts under this subtitle.

^SEC. 325. PUBLICATION OF RESULTS.

^(a) Submission to Commission- As soon as practicable after the completion of an audit under this subtitle, the Election Audit Board 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 Board under the audit and the final unofficial vote count in the precinct as announced by the State, as well as a list of any discrepancies discovered between the initial, subsequent, and final hand counts administered by the Board and such final unofficial vote count and any explanation for such discrepancies, broken down by the categories of votes described in paragraphs (2) and (3) of section 323(a).

`(b) Publication by Commission- Immediately after receiving the submission of the results of an audit from the Election Audit Board 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 the completion of the audit and the announcement and submission of the results of the audit to the Commission for publication of the information required under this section.

`(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 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 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) a notice submitted by the State to the Commission (in such form and containing such information as the Commission may require).

`(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) Authorization of Appropriations- There are authorized to be appropriated to the Commission for fiscal year 2008 and each succeeding fiscal year such sums as may be necessary for payments under this section.

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

`This subtitle does not apply to any election for which a [manual recount of the voter-verified paper ballots](#) is required automatically under State law because of the margin of victory between the two candidates receiving the largest number of votes in the election. Nothing in the previous sentence may be construed to waive the application of any other provision of this Act to any election (including the ballot verification and audit capacity requirements of section 301(a)(2)).

`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 2008.'

(b) Availability of Enforcement Under Help America Vote Act of 2002- Section 401 of such Act (42 U.S.C. 15511), as amended by section 3, 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 'section 303' and inserting 'section 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.'.

(c) Clerical Amendment- The table of contents of such Act is amended by adding at the end of the item relating to title III the following:

`Subtitle C--Mandatory Manual Audits by Election Audit Boards

`Sec. 321. Establishment of Election Audit Boards.

`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 automatic recount within 24 hours under State law.

`Sec. 328. Effective date.'

SEC. 6. 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.

SEC. 7. EFFECTIVE DATE.

Except as otherwise provided, this Act and the amendments made by this Act shall apply with respect to elections for Federal office occurring during 2008 and each succeeding year.

END