

110TH CONGRESS  
2D SESSION

# S. 3212

To amend the Help America Vote Act of 2002 to provide for auditable, independent verification of ballots, to ensure the security of voting systems, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 26, 2008

Mrs. FEINSTEIN (for herself and Mr. BENNETT) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

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## A BILL

To amend the Help America Vote Act of 2002 to provide for auditable, independent verification of ballots, to ensure the security of voting systems, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Bipartisan Electronic Voting Reform Act of 2008”.

6 (b) TABLE OF CONTENTS.—The table of contents of  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

- Sec. 2. Independent verification of ballots.
- Sec. 3. Audits.
- Sec. 4. Election security.
- Sec. 5. Testing and certification.
- Sec. 6. Research and development.
- Sec. 7. Reauthorization of requirements payments.
- Sec. 8. Technical guidelines development committee.
- Sec. 9. Prohibiting refusal to accept voter registration and absentee ballot applications and federal write-in absentee ballots for failure to meet nonessential requirements.
- Sec. 10. Ballot layout design.

**1 SEC. 2. INDEPENDENT VERIFICATION OF BALLOTS.**

2 (a) IN GENERAL.—Clause (i) of section 301(a)(1)(A)  
 3 of the Help America Vote Act of 2002 (42 U.S.C.  
 4 15481(a)(1)(A)(i)) is amended by inserting “and, in the  
 5 case of any voting system other than a voting system  
 6 which uses paper ballots that are personally marked by  
 7 the voter, in the manner provided in paragraph (7),” after  
 8 “(in a private and independent manner”.

9 (b) METHOD OF VERIFICATION FOR CERTAIN VOT-  
 10 ING SYSTEMS.—Section 301(a) of the Help America Vote  
 11 Act of 2002 (42 U.S.C. 15481(a)) is amended by adding  
 12 at the end the following new paragraph:

13 “(7) METHOD OF INDEPENDENT  
 14 VERIFICATION.—In order to meet the requirements  
 15 of paragraph (1)(A)(i) with respect to any voting  
 16 system to which this paragraph applies:

17 “(A) IN GENERAL.—The voting system  
 18 shall provide for verification of the votes se-  
 19 lected by the voter by a means that—

1 “(i) is independent of the device on  
2 which the vote is cast; and

3 “(ii) permits verification through the  
4 use of—

5 “(I) a paper record;

6 “(II) an electronic record;

7 “(III) an audio record;

8 “(IV) a video record;

9 “(V) a pictorial record; or

10 “(VI) another independently pro-  
11 duced record.

12 “(B) AUDIT CAPACITY.—The final record  
13 used for independent verification under sub-  
14 paragraph (A) for each voter shall be auditable.

15 “(C) ACCESSIBILITY FOR INDIVIDUALS  
16 WITH DISABILITIES AND LANGUAGE MINORI-  
17 TIES.—Any method of independent verification  
18 under subparagraph (A) shall—

19 “(i) be accessible for individuals with  
20 disabilities, including nonvisual accessi-  
21 bility for the blind and visually impaired,  
22 in a manner that provides the same oppor-  
23 tunity for access and participation (includ-  
24 ing privacy and independence) as for other  
25 voters; and

1 “(ii) provide alternative language ac-  
 2 cessibility pursuant to the requirements of  
 3 section 203 of the Voting Rights Act of  
 4 1965 (42 U.S.C. 1973aa–1a).

5 “(D) VOTING SYSTEMS TO WHICH THIS  
 6 PARAGRAPH APPLIES.—The requirements of  
 7 this paragraph apply to any voting system other  
 8 than—

9 “(i) a voting system which uses paper  
 10 ballots that are personally marked by the  
 11 voter; and

12 “(ii) a voting system purchased before  
 13 January 1, 2009, in order to meet the re-  
 14 quirements of paragraph (3)(B).”.

15 (c) EFFECTIVE DATE.—Subsection (d) of section 301  
 16 of such Act (42 U.S.C. 15481(d)) is amended—

17 (1) by striking “Each State” and inserting the  
 18 following:

19 “(1) IN GENERAL.—Except as provided in para-  
 20 graph (2), each State”; and

21 (2) by adding at the end the following new  
 22 paragraph:

23 “(2) INDEPENDENT VERIFICATION PROVI-  
 24 SIONS.—

“(A) IN GENERAL.—Each State and jurisdiction shall be required to comply with the requirements of paragraph (7) of subsection (a) on and after January 1, 2012.

“(B) WAIVER.—In the case of a State or jurisdiction which is granted a waiver by the Election Assistance Commission pursuant to this subparagraph, subparagraph (A) shall be applied by substituting ‘2014’ for ‘2012’.”.

### 10 **SEC. 3. AUDITS.**

11 (a) PURPOSE.—The purposes of this section are—

12 (1) to ensure that each certificate of election  
13 awarded under State law is justified by the vote to-  
14 tals;

15 (2) to ensure that, even in elections where the  
16 results are not close, individual votes are counted  
17 correctly; and

18 (3) to provide information to election officials  
19 for the improvement of election processes and tech-  
20 nologies.

21 (b) MANDATORY AUDITS.—

22 (1) IN GENERAL.—Subtitle A of title III of the  
23 Help America Vote Act of 2002 (42 U.S.C. 15481  
24 et seq.) is amended by redesignating sections 304  
25 and 305 as sections 305 and 306, respectively, and

1 by inserting after section 303 the following new sec-  
 2 tion:

3 **“SEC. 304. ELECTION AUDITS.**

4 “(a) AUDITS.—

5 “(1) IN GENERAL.—With respect to each elec-  
 6 tion for Federal office, each State shall conduct an  
 7 audit.

8 “(2) PUBLIC PARTICIPATION.—Each audit  
 9 under this section shall be conducted in a public and  
 10 transparent manner.

11 “(3) AUDIT REPORTS.—

12 “(A) STATE SUBMISSION OF REPORT.—  
 13 Each State shall submit to the Commission a  
 14 report, in such form as provided by the Com-  
 15 mission, on the results of the audit conducted  
 16 under this section.

17 “(B) PUBLICATION.—The Commission  
 18 shall publish each report submitted under sub-  
 19 paragraph (A) upon receipt.

20 “(b) EFFECTIVE DATE.—Each State shall be re-  
 21 quired to comply with the requirements of this section on  
 22 and after the date such State is required to comply with  
 23 the requirements under section 301(a)(7).”.

24 (2) AVAILABILITY OF ENFORCEMENT UNDER  
 25 HELP AMERICA VOTE ACT OF 2002.—Section 401 of

1 such Act (42 U.S.C. 15511) is amended by striking  
 2 “and 303” and inserting “303, and 304”.

3 (3) CLERICAL AMENDMENT.—The table of con-  
 4 tents of the Help America Vote Act of 2002 is  
 5 amended by striking the items relating to sections  
 6 304 and 305 and inserting the following:

“Sec. 304. Election audits.

“Sec. 305. Minimum requirements.

“Sec. 306. Methods of implementation left to discretion of State.”.

7 (c) REQUIREMENTS FOR STATE PLANS.—Section  
 8 254(a) of the Help America Vote Act of 2002 (42 U.S.C.  
 9 15404(a)) is amended by adding at the end the following  
 10 new paragraph:

11 “(14) A description of the audit procedures  
 12 that will be used by the State for the purpose of  
 13 conducting audits under section 304(a).”.

14 (d) MODEL AUDIT GUIDELINES.—

15 (1) IN GENERAL.—Subtitle A of title II of the  
 16 Help America Vote Act of 2002 (42 U.S.C. 15321  
 17 et seq.) is amended by adding at the end the fol-  
 18 lowing new part:

19 **“PART 4—MODEL AUDIT GUIDELINES.**

20 **“SEC. 223. AUDIT GUIDELINES DEVELOPMENT TASK FORCE.**

21 “(a) ESTABLISHMENT.—The Commission shall es-  
 22 tablish an Audit Guidelines Development Task Force  
 23 (hereafter in this part referred to as the ‘Task Force’).

24 “(b) MEMBERSHIP.—

1           “(1) IN GENERAL.—The Task Force shall be  
 2       composed of individuals who are experts in such  
 3       fields as election audits, physical security of ballots,  
 4       recounts, computer technology, and election manage-  
 5       ment. The composition of the Task Force shall (to  
 6       the extent possible) reflect the demographic composi-  
 7       tion of the voting age population of the United  
 8       States.

9           “(2) CONSULTATION.—The Commission shall  
 10      consult with the Director of the National Institute of  
 11      Standards and Technologies on—

12                 “(A) the composition of the Task Force;  
 13                 and

14                 “(B) the appointment of members to the  
 15      Task Force.

16      “(c) DUTIES.—

17           “(1) IN GENERAL.—The Task Force shall as-  
 18      sist the Commission in developing model audit  
 19      guidelines for administrative and procedural prac-  
 20      tices to ensure efficient, transparent, and accurate  
 21      audits of Federal elections. Such guidelines shall in-  
 22      clude best practices with respect to auditing Federal  
 23      elections using the following independently verified  
 24      records under section 301(a)(7):

25                 “(A) Paper records.



1 “(B) Electronic records.

2 “(C) Audio records.

3 “(D) Video records.

4 “(E) Pictorial records.

5 “(F) Other independently produced  
6 records.

7 “(2) DEADLINE FOR INITIAL SET OF REC-  
8 OMMENDATIONS.—The Task Force shall provide its  
9 first set of recommendations under this section to  
10 the Executive Director of the Commission not later  
11 than 1 year after the Task Force is established.

12 “(d) CONSIDERATIONS.—In developing the model  
13 audit guidelines under subsection (c), the Task Force shall  
14 consider—

15 “(1) the time, place, and manner for conducting  
16 audits;

17 “(2) processes for completing manual audits of  
18 independently verified records under section  
19 301(a)(7) comparing such records with vote tallies;

20 “(3) the cost and burden on local election offi-  
21 cials of conducting an audit;

22 “(4) the personnel and management require-  
23 ments of conducting audits;

24 “(5) recommended protocols for auditing the se-  
25 curity of elections, including chain of custody proto-

1 cols, the maintenance, security, and accuracy of  
 2 voter registration lists, and other procedures; and

3 “(6) the interaction of audits with State laws,  
 4 including laws pertaining to recounts.

5 “(e) PUBLICATION OF REPORT.—The Task Force  
 6 shall make its recommendations to the Commission public  
 7 upon delivering them to the Commission.

8 **“SEC. 224. PROCESS FOR ADOPTION.**

9 “The Commission shall provide for publication of the  
 10 recommendations from the Task Force, an opportunity for  
 11 public comment on the proposed model audit guidelines,  
 12 and an opportunity for a public hearing on the record.  
 13 Final model audit guidelines shall be adopted by the Com-  
 14 mission after a majority vote of the members of the Com-  
 15 mission.”.

16 (2) TECHNICAL AMENDMENT.—Section 202 of  
 17 such Act (42 U.S.C. 15322) is amended by striking  
 18 “and” at the end of paragraph (5), by striking the  
 19 period at the end of paragraph (6) and inserting “;  
 20 and”, and by adding at the end the following new  
 21 paragraph:

22 “(7) carrying out the duties described in part 4  
 23 (relating to the adoption of model audit guidelines),  
 24 including the maintenance of a clearinghouse of in-  
 25 formation on the experiences of State and local gov-

1 ernments in implementing the guidelines and in con-  
 2 ducting audits in general.”.

3 (3) CLERICAL AMENDMENT.—The table of con-  
 4 tents of such Act is amended by inserting after the  
 5 item relating to section 222 the following:

“PART 4—MODEL AUDIT GUIDELINES

“Sec. 223. Audit Guidelines Development Task Force.

“Sec. 224. Process for adoption.”.

6 **SEC. 4. ELECTION SECURITY.**

7 (a) CHAIN OF CUSTODY PROTOCOLS AND DISCLO-  
 8 SURE.—

9 (1) IN GENERAL.—Section 301(a) of the Help  
 10 America Vote Act of 2002 (42 U.S.C. 15481(a)), as  
 11 amended by section 2(a), is amended by adding at  
 12 the end the following new paragraphs:

13 “(8) CHAIN OF CUSTODY PROTOCOLS.—No vot-  
 14 ing system may be used in an election for Federal  
 15 office unless the chain of custody for the handling  
 16 of all voting systems, technologies, and other innova-  
 17 tions used in connection with voting systems for  
 18 independent verification and for other voting proc-  
 19 esses and purposes (including ballots and independ-  
 20 ently verified records under section 301(a)(7)) is  
 21 documented by State election officials, under stand-  
 22 ards developed by the State, and made available to  
 23 the Commission upon request.

1 “(9) DISCLOSURE.—

2 “(A) DISCLOSURE OF ELECTION-DEDI-  
3 CATED SOFTWARE.—

4 “(i) IN GENERAL.—No voting system  
5 shall at any time contain or use any elec-  
6 tion-dedicated software unless such soft-  
7 ware has been disclosed as provided under  
8 clause (ii).

9 “(ii) DISCLOSURE.—Software dis-  
10 closed under this subparagraph shall be  
11 disclosed to the Commission and to any  
12 State using such voting system in elec-  
13 tronic form and shall include such informa-  
14 tion as is necessary to assess the integrity  
15 and efficacy of such software.

16 “(B) DISCLOSURE OF OTHER SOFT-  
17 WARE.—No voting system shall at any time  
18 contain or use any software other than election-  
19 dedicated software unless the manufacturer of  
20 such software discloses in electronic form such  
21 information as the Commission determines ap-  
22 propriate to the Commission, the National In-  
23 stitute of Standards and Technology, and the  
24 Chief State election official of any State using  
25 such voting system.

1           “(C) TIMING OF DISCLOSURE.—Any dis-  
2           closure required under subparagraph (A) or (B)  
3           shall be made before any voting system con-  
4           taining such software is used in an election for  
5           Federal office, except that in the case of soft-  
6           ware additions or patches which are necessary  
7           for the secure and proper functioning of the  
8           voting system and the disclosure of which can-  
9           not be made in adequate time prior to the elec-  
10          tion, such disclosure shall be made in a reason-  
11          able period of time after the election.

12          “(D) STORAGE OF SOFTWARE.—The Com-  
13          mission shall transmit the information disclosed  
14          under subparagraphs (A) and (B) to an entity  
15          selected by the National Institute of Standards  
16          and Technology, in consultation with the Com-  
17          mission.

18          “(E) USE OF INFORMATION.—

19                 “(i) IN GENERAL.—Information dis-  
20                 closed under this paragraph may not be  
21                 provided to any person except as provided  
22                 in this subparagraph.

23                 “(ii) DISCLOSURE TO GOVERNMENTAL  
24                 ENTITIES.—Information disclosed under  
25                 this paragraph may be provided to the

1 Commission, the National Institute of  
2 Standards and Technology, the Chief State  
3 election official of any State using such  
4 electronic voting software in a voting sys-  
5 tem, or any other Federal or State govern-  
6 mental entity responsible for the adminis-  
7 tration or enforcement of election laws, but  
8 only for the purposes of administering or  
9 enforcing election laws, or for review, anal-  
10 ysis, and reporting as provided in subpara-  
11 graphs (F) and (G).

12 “(iii) DISCLOSURE TO PARTIES IN  
13 LITIGATION.—Information disclosed under  
14 this paragraph may be provided to a party  
15 involved in litigation with respect to an  
16 election in which such electronic voting  
17 software is used, but only if such informa-  
18 tion is disclosed—

19 “(I) pursuant to the order of a  
20 judge after a showing—

21 “(aa) of need; and

22 “(bb) that such information  
23 is directly related to the litiga-  
24 tion; and

1 “(II) to all parties involved in  
2 such litigation.

3 Information disclosed under this clause  
4 may only be disclosed to the extent nec-  
5 essary for the review and analysis of such  
6 information (as provided in subparagraphs  
7 (F) and (G)) for use in such litigation.

8 “(iv) DISCLOSURE TO OTHER PER-  
9 SONS.—Information disclosed under this  
10 paragraph may be provided to independent  
11 technical experts and other persons and  
12 entities consistent with standards estab-  
13 lished by the Commission, but only for  
14 purposes of reviewing, analyzing, and re-  
15 porting on the operation of such software  
16 as provided in subparagraphs (F) and (G).

17 “(F) SCOPE OF REVIEW, ANALYSIS, AND  
18 REPORTING.—The review, analysis, and report-  
19 ing of software permitted under subparagraph  
20 (E) may only consist of the following:

21 “(i) In the case of election-dedicated  
22 software, performing review and analysis  
23 of the software, disclosing reports and  
24 analysis that describe operational issues  
25 (including vulnerabilities to tampering, er-

1 rors, risks associated with use, failures as  
2 a result of use, and other operational  
3 issues), and describing or explaining why  
4 or how a voting system failed or otherwise  
5 did not perform as intended, but only if  
6 the information published does not com-  
7 promise the integrity of the software or re-  
8 sult in the disclosure of trade secrets or  
9 other confidential commercial information,  
10 or violate intellectual property rights in  
11 such software.

12 “(ii) In the case of software other  
13 than election-dedicated software, per-  
14 forming review and analysis of the soft-  
15 ware, and issuing reports that describe  
16 operational issues, but only if the informa-  
17 tion published does not compromise the in-  
18 tegrity of the software or result in the dis-  
19 closure of trade secrets or other confiden-  
20 tial commercial information, or violate in-  
21 tellectual property rights in such software.

22 “(G) PROTECTION OF INFORMATION PRO-  
23 VIDED THROUGH DISCLOSURE.—Any recipient  
24 of information disclosed under this paragraph—



1 “(i) shall not compromise the integrity  
2 of the software with respect to which such  
3 information relates;

4 “(ii) shall not disclose any trade se-  
5 crets or other confidential commercial in-  
6 formation with respect to such software;  
7 and

8 “(iii) shall not violate any intellectual  
9 property rights in such software.

10 The Commission shall develop a process with  
11 manufacturers and holders of intellectual prop-  
12 erty to ensure compliance with the requirements  
13 of this subparagraph.

14 “(H) ELECTION-DEDICATED SOFTWARE.—

15 For purposes of this paragraph, the term ‘elec-  
16 tion-dedicated software’ means software that—

17 “(i) is specifically designed for use  
18 primarily in a voting system; or

19 “(ii) has been specifically modified for  
20 use primarily in a voting system, but only  
21 to the extent of such modification.”.

22 (2) EFFECTIVE DATE.—Section 301(d)(2)(A) of  
23 such Act, as added by section 2(c), is amended by  
24 striking “paragraph (7)” and inserting “paragraphs  
25 (7), (8), and (9)”.

1 (b) MINIMUM STANDARDS TO ENSURE INTEGRITY  
 2 OF VOTING PROCESS AND EDUCATION AND TRAINING OF  
 3 POLL WORKERS.—Section 254(a) of such Act (42 U.S.C.  
 4 15404(a)), as amended by section 3(c), is amended by  
 5 adding at the end the following new paragraph:

6 “(15) How the State will establish minimum  
 7 standards with respect to—

8 “(A) ensuring the integrity of the voting  
 9 process at the polling place on Election Day  
 10 (which may include standards with respect to  
 11 chain of custody, parallel testing of voting sys-  
 12 tems, routine inspections of polling places for  
 13 the use of appropriate polling procedures, and  
 14 other processes); and

15 “(B) the education and training of poll  
 16 workers (which may include standards with re-  
 17 spect to Federal and State law requirements,  
 18 voting systems, the provision of contact infor-  
 19 mation, and other processes).”.

20 (c) CONTINGENCY PLANS.—Section 254(a) of such  
 21 Act (42 U.S.C. 15404(a)), as amended by subsection (b),  
 22 is amended by adding at the end the following new para-  
 23 graph:

24 “(16) How the State will provide for contin-  
 25 gency plans in the event of voting system failures

1 and other events, such as national or State emer-  
2 gencies, that may impact the results of an election  
3 for Federal office, including—

4 “(A) how the State will ensure the integ-  
5 rity of the voting process on election day—

6 “(i) at the polling place (which may  
7 include the use of emergency ballots by  
8 means of a paper record, an electronic  
9 record, an audio record, a video record, a  
10 pictorial record, or another independently  
11 produced record); and

12 “(ii) at any place other than the poll-  
13 ing place;

14 “(B) if the State provides for the use of  
15 emergency paper ballots, how the State will  
16 comply with the accessibility requirements for  
17 individuals with disabilities under section  
18 301(a)(3)(A) and the alternative language ac-  
19 cessibility requirements under section  
20 301(a)(4); and

21 “(C) the selection of polling locations that  
22 are best able to manage voting system failures  
23 and other events that may impact the elec-  
24 tion.”.

1 (d) VOLUNTARY VOTING SYSTEM GUIDELINES.—  
 2 Section 222 of such Act (42 U.S.C. 15362) is amended  
 3 by adding at the end the following new subsection:

4 “(f) 2007 GUIDELINES.—The 2007 Voluntary Voting  
 5 System Guidelines shall be the voluntary voting system  
 6 guidelines referred to in this part as of the date such  
 7 guidelines are adopted by the Commission under sub-  
 8 section (d). Nothing in the preceding sentence shall be  
 9 construed to limit the authority of the Development Com-  
 10 mittee or the Commission to modify such guidelines or to  
 11 issue new guidelines or recommendations.”.

12 **SEC. 5. TESTING AND CERTIFICATION.**

13 (a) IN GENERAL.—Section 231(b) of the Help Amer-  
 14 ica Vote Act of 2002 (42 U.S.C. 15371(b)) is amended  
 15 by adding at the end the following new paragraphs:

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

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

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

1 hardware and software is the payment  
2 made from the Testing Escrow Account  
3 under paragraph (4);

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

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

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

“(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. The Commission shall ensure such disclosure does not include any trade secrets or confidential information and does not violate intellectual property rights.

“(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 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 testing carried out in connection with the certification, decertification, and recertification of voting system hardware

1 and software, based on the reasonable costs ex-  
2 pected to be incurred by the accredited labora-  
3 tories in carrying out such testing for various  
4 types of hardware and software.

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

10 “(i) the manufacturer submits such  
11 system for testing to the Commission; and

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

18 “(D) SELECTION OF LABORATORY.—Upon  
19 receiving a system submitted for testing and the  
20 payment from a manufacturer required under  
21 subparagraph (C), the Commission shall select  
22 at random, to the greatest extent possible, from  
23 all laboratories which are accredited under this  
24 section, a laboratory to carry out the testing.

1           “(E) PAYMENTS TO LABORATORIES.—

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

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

14               “(A) INFORMATION ON TESTING.—The  
 15               Commission shall disseminate to the public the  
 16               identification of the laboratory which carried  
 17               out the testing.

18               “(B) LABORATORIES WITH ACCREDITA-  
 19               TION REVOKED OR SUSPENDED.—If the Com-  
 20               mission revokes, terminates, or suspends the ac-  
 21               creditation of a laboratory under this section, or  
 22               if the Commission has credible evidence of sig-  
 23               nificant security failures at accredited labora-  
 24               tories, the Commission shall promptly notify



1 Congress, the chief State election official of  
2 each State, and the public.”.

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

5 (1) in subsection (a)(1), by striking “testing,  
6 certification,” and all that follows and inserting the  
7 following: “testing of voting system hardware and  
8 software by accredited laboratories in connection  
9 with the certification, decertification, and recertifi-  
10 cation of the hardware and software for purposes of  
11 this Act.”;

12 (2) in subsection (a)(2), by striking “testing,  
13 certification,” and all that follows and inserting the  
14 following: “testing of its voting system hardware and  
15 software by the laboratories accredited by the Com-  
16 mission under this section in connection with certi-  
17 fying, decertifying, and recertifying such hardware.”;

18 (3) in subsection (b)(1), by striking “testing,  
19 certification, decertification, and recertification” and  
20 inserting “testing”; and

21 (4) in subsection (d), by striking “testing, cer-  
22 tification, decertification, and recertification” each  
23 place it appears and inserting “testing”.

24 (c) DEADLINE FOR ESTABLISHMENT OF STANDARDS  
25 AND ESCROW ACCOUNT.—The Election Assistance Com-

1 mission shall establish the standards described in section  
 2 231(b)(3) of the Help America Vote Act of 2002 and the  
 3 Testing Escrow Account described in section 231(b)(4) of  
 4 such Act (as added by subparagraph (A)) not later than  
 5 than 6 months after the date of the enactment of this Act.

6 **SEC. 6. RESEARCH AND DEVELOPMENT.**

7 (a) GRANTS FOR THE DEVELOPMENT AND TESTING  
 8 OF NEW VOTING SYSTEMS, TECHNOLOGIES, AND INNOVA-  
 9 TIONS.—

10 (1) IN GENERAL.—Subtitle C of title II of the  
 11 Help America Vote Act of 2002 (42 U.S.C. 15321  
 12 et seq.) is amended by adding at the end the fol-  
 13 lowing new section:

14 **“SEC. 248. GRANTS FOR THE DEVELOPMENT AND TESTING**  
 15 **OF NEW VOTING SYSTEMS, TECHNOLOGIES,**  
 16 **AND INNOVATIONS.**

17 “(a) IN GENERAL.—The Commission shall, in con-  
 18 sultation with the National Institute of Standards and  
 19 Technology, make grants to qualified academic and re-  
 20 search institutions for the development and testing of new  
 21 voting systems, technologies, and innovations for purposes  
 22 of meeting the independent verification requirements  
 23 under section 301(a)(7).

24 “(b) ELIGIBILITY.—An academic and research insti-  
 25 tution is eligible to receive a grant under this section if

1 it submits an application to the Commission at such time,  
 2 in such form, and containing such information and certifi-  
 3 cations as the Commission may require.

4 “(c) PROVIDING FOR A PEER-REVIEW PROCESS.—  
 5 Each academic and research institute which receives a  
 6 grant under this section shall ensure that there is a proc-  
 7 ess for peer review of the activities carried out with the  
 8 funds provided under the grant.

9 “(d) APPLICABILITY OF REGULATIONS GOVERNING  
 10 PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL  
 11 ASSISTANCE.—Any invention made by the recipient of a  
 12 grant under this section using funds provided under this  
 13 section shall be subject to chapter 18 of title 35, United  
 14 States Code (relating to patent rights in inventions made  
 15 with Federal assistance).

16 “(e) REPORT.—

17 “(1) IN GENERAL.—Each academic and re-  
 18 search institution which receives a grant under this  
 19 section shall submit to the Commission a report de-  
 20 scribing the activities carried out with the funds pro-  
 21 vided under the grant.

22 “(2) DEADLINE.—An academic and research  
 23 institution shall submit a report required under  
 24 paragraph (1) not later than 6 months after the end

1 of the fiscal year for which the entity received the  
 2 grant which is the subject of the report.

3 “(f) AUTHORIZATION OF APPROPRIATIONS.—

4 “(1) IN GENERAL.—There are authorized to be  
 5 appropriated for grants under this section  
 6 \$15,000,000 for fiscal year 2009 and such sums as  
 7 may be necessary for succeeding fiscal years.

8 “(2) AVAILABILITY OF FUNDS.—Amounts ap-  
 9 propriated pursuant to the authorization under this  
 10 subsection shall remain available, without fiscal year  
 11 limitation, until expended.”.

12 (2) CLERICAL AMENDMENT.—The table of con-  
 13 tents of such Act is amended by inserting after the  
 14 item relating to section 247 the following new item:

“Sec. 248. Grants for the development and testing of new voting systems, tech-  
 nologies, and innovations.”.

15 (b) PILOT PROGRAM FOR TESTING AND ANALYZING  
 16 THE PERFORMANCE OF NEW VOTING SYSTEMS, TECH-  
 17 NOLOGIES, AND INNOVATIONS.—

18 (1) IN GENERAL.—Subtitle C of title II of the  
 19 Help America Vote Act of 2002 (42 U.S.C. 15321  
 20 et seq.), as amended by subsection (a), is amended  
 21 by adding at the end the following new section:

1   **“SEC. 249. PILOT PROGRAM FOR TESTING AND ANALYZING**  
2                   **THE PERFORMANCE OF NEW VOTING SYS-**  
3                   **TEMS, TECHNOLOGIES, AND INNOVATIONS.**

4           “(a) IN GENERAL.—The Commission shall, in con-  
5 sultation with the National Institute of Standards and  
6 Technology, make grants to carry out pilot programs  
7 under which new voting systems, technologies, and other  
8 innovations are tested and the performance of such sys-  
9 tems, technologies, and innovations is evaluated with re-  
10 spect to the independent verification requirements under  
11 section 301(a)(7).

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

17          “(c) PROVIDING FOR A PEER-REVIEW PROCESS.—  
18 Each entity which receives a grant under this section shall  
19 ensure that there is a process for peer review of the activi-  
20 ties carried out with the funds provided under the grant.

21          “(d) APPLICABILITY OF REGULATIONS GOVERNING  
22 PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL  
23 ASSISTANCE.—Any invention made by the recipient of a  
24 grant under this section using funds provided under this  
25 section shall be subject to chapter 18 of title 35, United

1 States Code (relating to patent rights in inventions made  
2 with Federal assistance).

3 “(e) REPORT.—

4 “(1) IN GENERAL.—Each entity which receives  
5 a grant under this section shall submit to the Com-  
6 mission a report describing the activities carried out  
7 with the funds provided under the grant.

8 “(2) DEADLINE.—An entity shall submit a re-  
9 port required under paragraph (1) not later than 6  
10 months after the end of the fiscal year for which the  
11 entity received the grant which is the subject of the  
12 report.

13 “(f) AUTHORIZATION OF APPROPRIATIONS.—

14 “(1) IN GENERAL.—There are authorized to be  
15 appropriated for grants under this section  
16 \$15,000,000 for fiscal year 2009 and such sums as  
17 may be necessary for succeeding fiscal years.

18 “(2) AVAILABILITY OF FUNDS.—Amounts ap-  
19 propriated pursuant to the authorization under this  
20 subsection shall remain available, without fiscal year  
21 limitation, until expended.”.

22 (2) CLERICAL AMENDMENT.—The table of con-  
23 tents for such Act, as amended by subsection (a), is  
24 amended by inserting after the item relating to sec-  
25 tion 248 the following new item:

“Sec. 249. Pilot program for testing and analyzing the performance of new voting systems, technologies, and innovations.”.

1 **SEC. 7. REAUTHORIZATION OF REQUIREMENTS PAYMENTS.**

2 (a) TASK FORCE ON REQUIREMENTS PAYMENT  
3 AMOUNTS.—

4 (1) IN GENERAL.—Part 1 of subtitle D of such  
5 Act (42 U.S.C. 15401 et seq.) is amended by adding  
6 at the end the following new section:

7 **“SEC. 259. TASK FORCE ON REQUIREMENTS PAYMENTS.**

8 “(a) ESTABLISHMENT.—The Commission shall es-  
9 tablish a task force to study and develop recommendations  
10 regarding the appropriate level of funding for require-  
11 ments payments under this part (hereafter in this part  
12 referred to as the ‘Task Force’).

13 “(b) MEMBERSHIP.—The Task Force shall be com-  
14 posed of members selected by the Commission, in con-  
15 sultation with the Technical Guidelines Development Com-  
16 mittee, the Standards Board, and the Board of Advisors.

17 “(c) REPORTS.—The Task Force shall submit, not  
18 less frequently than annually, to the Committee on Rules  
19 and Administration of the Senate and the Committee on  
20 House Administration of the House of Representatives re-  
21 ports on the recommendations developed under subsection  
22 (a).”.

1           (2) CLERICAL AMENDMENT.—The table of con-  
 2           tents for such Act is amended by inserting after the  
 3           item relating to section 258 the following new item:

“Sec. 259. Task force on requirements payments.”.

4           (b) SENSE OF THE SENATE RELATING TO AMOUNTS  
 5 APPROPRIATED FOR REQUIREMENTS PAYMENTS.—It is  
 6 the sense of the Senate that in appropriating amounts to  
 7 fund requirements payments under part 1 of subtitle D  
 8 of title II of the Help America Vote Act of 2002 (42  
 9 U.S.C. 15401 et seq.), Congress should—

10           (1) appropriate amounts sufficient to ensure  
 11           that States and jurisdictions are able to meet the re-  
 12           quirements of title III of such Act (42 U.S.C. 15481  
 13           et seq.); and

14           (2) take into consideration the funding levels  
 15           recommended by the task force on requirements pay-  
 16           ments under section 259 of such Act (as added by  
 17           subsection (a)).

18           (c) REAUTHORIZATION.—Section 257(a) of the Help  
 19 America Vote Act of 2002 (42 U.S.C. 15407(a)) is amend-  
 20 ed by adding at the end the following new paragraph:

21           “(4) For fiscal year 2010 and each year there-  
 22           after, such sums as may be necessary.”.

23           (d) REPORTS.—Section 258 of such Act (42 U.S.C.  
 24 15408) is amended—



1 (1) by striking “Not later” and inserting the  
2 following:

3 “(a) IN GENERAL.—Not later”; and

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

6 “(b) MODEL REPORTS.—The Commission shall de-  
7 velop a model expenditure and receipts report for use by  
8 States in filing reports under this section.

9 “(c) REPORTS TO CONGRESS.—The Commission  
10 shall submit to the Committee on Rules of the Senate and  
11 the Committee on House Administration of the House of  
12 Representatives an annual report summarizing the ex-  
13 penditures, receipts, and activities reported by each State  
14 under subsection (a).”.

15 **SEC. 8. TECHNICAL GUIDELINES DEVELOPMENT COM-**  
16 **MITTEE.**

17 Section 221(c)(1) of the Help America Vote Act of  
18 2002 (42 U.S.C. 15361(c)(1)) is amended—

19 (1) in the matter preceding subparagraph (A),  
20 by striking “14” and inserting “16”;

21 (2) by redesignating subparagraph (E) as sub-  
22 paragraph (G); and

23 (3) by inserting after subparagraph (D) the fol-  
24 lowing new subparagraphs:

1                   “(E) A representative of the voting system  
2                   manufacturing industry.

3                   “(F) A representative of the voting system  
4                   accessibility and usability sector.”.

5   **SEC. 9. PROHIBITING REFUSAL TO ACCEPT VOTER REG-**  
6                   **ISTRATION AND ABSENTEE BALLOT APPLICA-**  
7                   **TIONS AND FEDERAL WRITE-IN ABSENTEE**  
8                   **BALLOTS FOR FAILURE TO MEET NON-**  
9                   **ESSENTIAL REQUIREMENTS.**

10       (a) VOTER REGISTRATION AND ABSENTEE BALLOT  
11   APPLICATIONS.—Section 102 of the Uniformed and Over-  
12   seas Citizens Absentee Voting Act (42 U.S.C. 1973ff–1)  
13   is amended by adding at the end the following new sub-  
14   section:

15       “(e) PROHIBITING REFUSAL TO ACCEPT APPLICA-  
16   TIONS FOR FAILURE TO MEET NONESSENTIAL REQUIRE-  
17   MENTS.—A State shall accept and process any otherwise  
18   valid voter registration application or absentee ballot ap-  
19   plication (including the official post card form prescribed  
20   under section 101) submitted in any manner by an absent  
21   uniformed services voter or overseas voter that contains  
22   the information required on the official post card form  
23   prescribed under section 101 (other than information  
24   which the Presidential designee, in consultation with the  
25   Election Assistance Commission, determines, under regu-

lations promulgated by the Presidential designee, is not clearly necessary to prevent fraud in the conduct of elections).”.

(b) FEDERAL WRITE-IN ABSENTEE BALLOT.—Section 103 of such Act (42 U.S.C. 1973ff–2) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection:

“(f) PROHIBITING REFUSAL TO ACCEPT BALLOT FOR FAILURE TO MEET NONESSENTIAL REQUIREMENTS.—A State shall accept and process any otherwise valid Federal write-in absentee ballot submitted in any manner by an absent uniformed services voter or overseas voter that contains the information required to be submitted with such ballot by the Presidential designee (other than information which the Presidential designee, in consultation with the Election Assistance Commission, determines, under regulations promulgated by the Presidential designee, is not clearly necessary to prevent fraud in the conduct of elections).”.

**SEC. 10. BALLOT LAYOUT DESIGN.**

Section 254(a) of the Help America Vote Act of 2002 (42 U.S.C. 15404(a)), as amended by section 4, is amended by adding at the end the following new paragraph:

1           “(17) A description of the efforts the State will  
2           make to assist State and local election officials in  
3           improving ballot design, taking into consideration  
4           best practices, including best practices developed by  
5           the Commission.”.

○