

An Analysis of the "Ballot Integrity Act of 2007" Proposed in the US Senate <http://electionmathematics.org/em-legislation/BallotIntegrityActAnalysis.pdf>

Senator Diane Feinstein's recently released "Ballot Integrity Act of 2007" is co-sponsored by Senators Dodd, Sanders, Inouye, Obama, Brown, Leahy, Menendez, Kennedy, and Clinton (a powerful group so that this bill probably has more standing than Nelson's bill which more closely mirrors Representative Rush Holt's HR811 "Voter Confidence and Increased Accessibility Act of 2007".)

Here are links to Representative Ehler's alternative bill (which does not require any voter verified paper ballots), to Feinstein's press release, to Feinstein's bill, and to Holt's HR811:

[http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.2360:](http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.2360)

http://feinstein.senate.gov/public/index.cfm?FuseAction=NewsRoom.PressReleases&ContentRecord_id=c36f5f83-fbbf-a66a-2ae3-9d278d0f4e3c

<http://electionmathematics.org/em-legislation/FeinsteinDoddER-bill.pdf>

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h811rh.txt.pdf

The "Ballot Integrity Act" manual audit provisions are terrible compared to HR811:

1. Its audits are not independent, but may be conducted internally by election officials (See Section 304 "each State shall establish guidelines and standards for local jurisdictions to utilize in conducting audits..." and "each State shall establish guidelines and standards". This means that sham audit procedures like Utah's would be allowed where the manual counts of the voter-verifiable paper ballot records are never compared with the electronic tallies on the election management system which are actually used to tally votes.)
2. No audits are required until the 2010 election (i.e. It leaves the 2008 election wide-open to vote tampering or innocent error or electronic failures.) (See Section 201(d))
3. Its voluntary standards for audit procedures must be voted on by the US Election Assistance Commission (EAC) (Yikes, the EAC, whose Executive Director and Chair were original board members of a group founded by voting vendors called The Election Center, recently voted against a requirement for voter verifiable paper records that are necessary to independently audit vote count accuracy.)
4. The nonpartisan US Government Accountability Office (GAO) which has real expertise in audits is not even mentioned by Feinstein's bill (HR811 requires that US GAO standards for independent auditing are applied)
5. Only 2% of precincts are required to be audited (with no adjustment for close races, outcome-altering error would not be detected in many close US House races) (See Section 202. REQUIREMENTS FOR MANDATORY MANUAL AUDITS.)

6. Its audits are not required to be publicly verifiable by committing the data first (a practice required in auditing in any field). Without committing the data first, unaudited counts could be manipulated after the audit to match erroneous electronic tallies.

7. Its audits do not require comparing the voter verified ballots with the electronic tallies used to tally votes on the central tabulator. Instead the language says "the audit shall compare the vote tallies from the hand count of the individual, durable, voter-verified paper records ... with electronic tallies" (Section 202(a) (1)), so that the polling location electronic tallies could be used instead. This means that in places like Utah where election statutes prohibit the election night polling place tallies from being publicly posted (according to Utah election officials), and the "audit" is conducted by comparing voter verifiable paper ballot roll records with printouts of alleged polling place totals, the audits are a sham. i.e. "Ballot Integrity Act" audits could be easily manipulated because the vote counts are not required to be publicly released prior to beginning the audit and any electronic counts may be used. (I.e. there is nothing in Feinstein's bill to prevent sham or manipulate-able audits) in contrast to HR811's provisions.

8. Paperless DRE systems are not required to be replaced until the 2010 elections and funding is provided for that (\$600 Mill which is about what it would cost to replace paperless DREs with precinct-based optical-scan (PBOS) systems and ballot marking devices (BMDs)) (See Section 201(a) (1) (C) - States with paperless voting systems shall certify to the EAC by July, 2009 that they will comply with the new requirements by the deadline of January, 2010 - See Section 201(a) (2) (A).)

9. Feinstein's bill requires the elimination of voting systems using VVPT rolls, but does not seem to fund any monies for replacing them.

10. Feinstein's bill sets up a new "audit guidelines task force" but does not require taskforce members to have qualifications to set such standards (Section 223) and its audit standards are voluntary and the EAC must vote to adopt the voluntary standards (Section 224). The National Institute of Standards and Technology (NIST) is tasked to give advice on the audit standards, but the US GAO which has considerable expertise in auditing, is not. The audit task force is not required to be multi-partisan or to have members who are mathematicians, statisticians, gaming professionals, or anyone with the expertise to ensure that the audit protocols or procedures would be correctly set. Section 223 requires someone who is "expert in the field of election audits" - perhaps a former election official who has helped conduct prior insufficient, sham audits in the past? There is no requirement for any election integrity advocates to be on the audit guidelines task force either.

11. The "Ballot Integrity Act" sets up a clearinghouse of information on the experiences of state and local governments in implementing audit guidelines that is required to collect the experiences of election officials, who have historically covered up evidence of election problems, but no experiences of election integrity advocates or voters or expert citizens is collected. (Section 224)

So in sum, we can kiss the integrity and accuracy of the 2008 election results goodbye with this version of manual election audits (unless the idea is to blindly trust all voting vendors and

election officials to be infallible). The "Ballot Integrity Act" would risk the future of our country by letting another election go un-audited. The "Ballot Integrity Act" is not as good as HR811 was before HR811 was amended to fix some of its flaws.

However, The "Ballot Integrity Act" may be more palatable than HR811 for election officials and voting vendors who do not want election results subjected to independent audits, and voting system developers who hope to get some of the \$4 million allocated to research new voting systems.

Other bad provisions in the "Ballot Integrity Act" include:

1. Requires the implementation of text conversion technology specifically rather than making functional requirements and leaving the implementation open-ended (this also unfunded since this would require the replacement of all voting machines for voters with disabilities and there is no currently certified "text conversion" system available yet) (See Section 201(a) (2) (A)).
2. Requires partial software disclosure but only "as necessary to assess the integrity and efficacy of such software" and "only for the purpose of administering or enforcing election laws, or for review, analysis, and reporting" for use in litigation, but not as necessary for verifying that the certified software was actually the same as that used during elections (which would require a higher level of disclosure). It therefore has inadequate software disclosure requirements for the purpose of verifying what software actually ran during elections.
3. Allows voting devices which tally votes and which are used to program ballot definitions to be connected to the Internet, thus leaving voting systems wide open to malicious tampering through the Internet. (See Section 201(b) (1))
4. Implements discretionary un-enforceable requirements that any software, other than election-dedicated software, be disclosed, as the EAC deems appropriate. This would seem to require either global changes to national and international copyright and trademark laws, or development of new fully disclosed voting systems, in order to be enforced.
5. Requires that chain of custody (security procedures) for voting systems and ballots be disclosed to the EAC but does not require that they be disclosed to the public, therefore omitting any public scrutiny of ballot and voting system security procedures. (See Section 201(b) (1))
Having just tried to do a Google search on paper ballot and election record security procedures, I can tell you that surprisingly, there is not much information available.
6. Insufficient funding to meet all its requirements. Only \$600 Million to replace voting systems. (It would cost roughly \$990 Million to replace all paperless and paper-roll DRE voting machines with one precinct-based optical-scanner and one ballot marking device for voters with disabilities, for each precinct now using such DREs).

In its defense, however, there are some important additions to The "Ballot Integrity Act" that are missing in HR811, although it destroyed the audits, certainly for the 2008 where none are conducted, but also for the long term since audits are allowed to be internally conducted by election officials, be inadequate, and so forth.

Good features of the "Ballot Integrity Act" include:

1. Section 101 puts a moratorium on acquiring "for use in an election for Federal office a DRE voting system ... that does not produce a voter-verified paper record as required by section 301(a)(2).
2. Requires durable individual voter-verified paper records - thus making paper-roll DREs that violate voter privacy and are not durable illegal by 2010. See Section 201(a)(1)(A).
3. Specifies that the voter-verified paper record shall be used as the official ballot for purposes of recounts or audits. (See Section 201(a)(1)(A)) and if there are sufficient inconsistencies to put an outcome in question, and sufficient paper ballot records are compromised, then the electronic vote tallies shall not be the only consideration.
4. Requires "in the event of the failure of voting equipment or circumstance that causes a significant disruption of the voting process for voters, that any voter waiting to cast a ballot shall be advised immediately of the individual's right to use an "emergency paper ballot" and be provided with one.
5. Testing protocols, results, and all communications between the test laboratory and the manufacturer shall be provided to the EAC and to the public by the EAC.
6. New protections to ensure the accuracy and integrity of voter registration rolls; and to safeguard against accidental removal of legal voters, (Section 306) are implemented; and the procedures and protocols used to purge voters must be made public on the Internet.
7. Poll worker training is required, but not funded.(Section 303)
8. Allocation of voting systems, poll workers, and election resources is required to be equitable, but there is no timely enforcement method. Reports are required by States to explain violations. (Section 299)
9. Campaign Activities are prohibited for Chief State Election Officials. (Section 305)
10. Other provisions re. handling of military, overseas, provisional, and early voting.

The "Ballot Integrity Act" is a real disappointment if our goal is to ensure the accuracy of election outcomes because no sufficient, scientific, independent election audits are required.

Other Discussion of Federal Election Reform Legislation:

Support Clean Elections in 2008

<http://electionarchive.org/ucvAnalysis/US/SupportCleanElectionsIn2008.pdf>

Important Facts About The Voter Confidence & Increased Accessibility Act (HR811)

<http://electionarchive.org/ucvInfo/US/FactsAboutHR811.pdf>