

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 3763, AS REPORTED  
OFFERED BY MR. KUCINICH OF OHIO**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Investor, Shareholder,  
3 and Employee Protection Act of 2002”.

**4 SEC. 2. FINDINGS.**

5 The Congress finds the following:

6 (1) The failure of accounting firms to provide  
7 accurate audits of its clients is not a new or isolated  
8 problem.

9 (2) Accounting firms have been implicated in  
10 failed audits that have cost investors billions of dol-  
11 lars when earnings restatements sent stock prices  
12 tumbling.

13 (3) Auditors have an inherent conflict of inter-  
14 est. They are hired, and fired, by their audit clients.

15 (4) This conflict of interest pressures auditors  
16 to sign off on substandard financial statements rath-  
17 er than risk losing a large client.



1           (5) Auditing a public company for the benefit  
2 of small as well as large investors requires independ-  
3 ence.

4           (6) Therefore the only truly independent audit  
5 is one by a governmental agency.

6           (7) The Federal Bureau of Audits, closely regu-  
7 lated by the Commission, will provide honest audits  
8 of all publicly traded companies.

9 **SEC. 3. ESTABLISHMENT OF BUREAU.**

10          (a) ESTABLISHMENT.—There is hereby established  
11 within the Commission an independent regulatory agency  
12 to be known as the Federal Bureau of Audits.

13          (b) FUNCTION OF THE BUREAU.—The Bureau shall  
14 conduct an annual audit of the financial statements that  
15 are required be submitted by reporting issuers and to be  
16 certified under the securities laws or the rules or regula-  
17 tions thereunder.

18          (c) OFFICERS.—

19           (1) BUREAU HEAD.—The head of the Bureau  
20 shall be a Director, who shall be appointed by the  
21 President, by and with the advice and consent of the  
22 Senate.

23           (2) ADDITIONAL OFFICERS.—There shall also  
24 be in the Bureau a Deputy Director and an Inspec-  
25 tor General, each of whom shall be appointed by the



1 President, by and with the advice and consent of the  
2 Senate.

3 (3) TERMS.—The Director, Deputy Director,  
4 and Inspector General shall be appointed for terms  
5 of 12 years, except that—

6 (A) the first term of office of the Deputy  
7 Director shall be eight years; and

8 (B) the first term of office of the Inspector  
9 General shall be 4 years.

10 (d) INDEPENDENCE.—Except as provided in sections  
11 4 and 5, in the performance of their functions, the officers,  
12 employees, or other personnel of the Bureau shall not be  
13 responsible to or subject to the supervision or direction  
14 of any officer, employee, or agent of any other part of the  
15 Commission.

16 (e) ADMINISTRATIVE SUPPORT.—The Commission  
17 shall provide to the Bureau such support and facilities as  
18 the Director determines it needs to carry out its functions.

19 (f) RULES.—The Bureau is authorized to establish  
20 such procedural and administrative rules as are necessary  
21 to the exercise of its functions, but the Bureau may not  
22 establish any auditing standards within the jurisdiction of  
23 the Commission under sections 4 and 5.

24 (g) ADDITIONAL AUTHORITY.—In carrying out any  
25 of its functions, the Bureau shall have the power to hold



1 hearings, sign and issue subpoenas, administer oaths, ex-  
2 amine witnesses, and receive evidence at any place in the  
3 United States it may designate. The Bureau may, by one  
4 or more of its officers or by such agents as it may des-  
5 ignate, conduct any hearing or other inquiry necessary or  
6 appropriate to its functions, except that nothing in this  
7 subsection shall be deemed to supersede the provisions of  
8 section 556 of title 5, United States Code relating to hear-  
9 ing examiners.

10 (h) CONFLICT OF INTEREST PROVISIONS.—A person  
11 previously employed by the Bureau may not accept em-  
12 ployment or compensation from an issuer audited by the  
13 Bureau or an accountant that provides audit related serv-  
14 ices to an issuer audited by the Bureau for 10 years after  
15 the last day of employment at the Bureau. Any current  
16 employee of the Bureau shall be required to place all in-  
17 vestments in a blind trust, in accordance with regulations  
18 prescribed by the Commission. The employees of the Bu-  
19 reau who conduct the audits shall be exempt from the civil  
20 service pay system under section 4802 of title 5, United  
21 States Code, and shall be paid salaries that are competi-  
22 tive with similar private sector employment.

23 (i) LEGAL REPRESENTATION.—Except as provided in  
24 section 518 of title 28, United States Code, relating to  
25 litigation before the Supreme Court, attorneys designated



1 by the Director of the Bureau may appear for, and rep-  
2 resent the Bureau in, any civil action brought in connec-  
3 tion with any function carried out by the Bureau pursuant  
4 to this Act or as otherwise authorized by law.

5 **SEC. 4. ASSUMPTION OF AUTHORITY BY COMMISSION OVER**  
6 **AUDITING STANDARDS.**

7 (a) ASSUMPTION OF AUTHORITY.—Pursuant to its  
8 authority under the securities laws to require the certifi-  
9 cation, in accordance with the rules of the Commission,  
10 of financial statements and other documents of reporting  
11 issuers of securities, the Commission shall, by rule, estab-  
12 lish and revise as necessary auditing standards for audits  
13 of such financial statements.

14 (b) INCORPORATION OF CURRENT STANDARDS.—In  
15 adopting auditing standards under this section, the Com-  
16 mission shall incorporate generally accepted auditing  
17 standards in effect on the date of enactment of this Act,  
18 with such modifications as the Commission determines are  
19 necessary and appropriate in the public interest and for  
20 the protection of investors.

21 (c) ADDITIONAL REQUIREMENTS FOR RULES.—The  
22 rules prescribed by the Commission under subsection  
23 (a)—

24 (1) shall be available for public comment for  
25 not less than 90 days;



1 (2) shall be prescribed not less than 180 days  
2 after the date of enactment of this Act; and

3 (3) shall be effective on the first January 1 that  
4 occurs after the end of such 180 days.

5 **SEC. 5. FEES FOR THE RECOVERY OF COSTS OF OPER-**  
6 **ATIONS.**

7 (a) IN GENERAL.—The Commission shall in accord-  
8 ance with this section assess and collect a fee on each re-  
9 porting issuer whose financial statements are audited by  
10 the Bureau. This section applies as of the first fiscal year  
11 that begins after the date of enactment of this Act (re-  
12 ferred to in this section as the ‘first applicable fiscal  
13 year’).

14 (b) TOTAL FEE REVENUES; INDIVIDUAL FEE  
15 AMOUNTS.—The total fee revenues collected under sub-  
16 section (a) for a fiscal year shall be the amounts appro-  
17 priated under subsection (d)(2) for such fiscal year. Indi-  
18 vidual fees shall be assessed by the Commission on the  
19 basis of an estimate by the Commission of the amount  
20 necessary to ensure that the sum of the fees collected for  
21 such fiscal year equals the amount so appropriated.

22 (c) FEE WAIVER OR REDUCTION.—The Commission  
23 shall grant a waiver from or a reduction of a fee assessed  
24 under subsection (a) if the Commission finds that the fee



1 to be paid will exceed the anticipated present and future  
2 costs of the operations of the Bureau.

3 (d) CREDITING AND AVAILABILITY OF FEES.—

4 (1) IN GENERAL.—Fees collected for a fiscal  
5 year pursuant to subsection (a) shall be credited to  
6 the appropriation account for salaries and expenses  
7 of the Bureau and shall be available until expended  
8 without fiscal year limitation.

9 (2) APPROPRIATIONS.—

10 (A) FIRST FISCAL YEAR.—For the first ap-  
11 plicable fiscal year, there shall be available for  
12 the salaries and expenses of the Bureau  
13 \$5,150,000,000.

14 (B) SUBSEQUENT FISCAL YEARS.—For  
15 each of the four fiscal years following the first  
16 applicable fiscal year, there shall be available  
17 for the salaries and expenses of the Bureau an  
18 amount equal to the amount made available by  
19 paragraph (1) for the first applicable fiscal  
20 year, multiplied by the adjustment factor for  
21 such fiscal year (as defined in subsection (f)).

22 (e) COLLECTION OF UNPAID FEES.—In any case  
23 where the Commission does not receive payment of a fee  
24 assessed under subsection (a) within 30 days after it is  
25 due, such fee shall be treated as a claim of the United



1 States Government subject to subchapter II of chapter 37  
2 of title 31, United States Code.

3 (f) DEFINITION OF ADJUSTMENT FACTOR.—For  
4 purposes of this section, the term ‘adjustment factor’ ap-  
5 plicable to a fiscal year is the lower of—

6 (1) the Consumer Price Index for all urban con-  
7 sumers (all items; United States city average) for  
8 April of the preceding fiscal year divided by such  
9 Index for April of the first applicable fiscal year; or

10 (2) the total of discretionary budget authority  
11 provided for programs in categories other than the  
12 defense category for the immediately preceding fiscal  
13 year (as reported in the Office of Management and  
14 Budget sequestration preview report, if available, re-  
15 quired under section 254(c) of the Balanced Budget  
16 and Emergency Deficit Control Act of 1985) divided  
17 by such budget authority for the first applicable fis-  
18 cal year (as reported in the Office of Management  
19 and Budget final sequestration report submitted for  
20 such year).

21 For purposes of this subsection, the terms “budget au-  
22 thority” and “category” have the meaning given such  
23 terms in the Balanced Budget and Emergency Deficit  
24 Control Act of 1985.



1 **SEC. 5. DEFINITIONS.**

2 As used in this Act:

3 (1) COMMISSION.—The term “Commission”  
4 means the Securities and Exchange Commission.

5 (2) SECURITIES LAWS.—The term “securities  
6 laws” means the Securities Act of 1933 (15 U.S.C.  
7 77a et seq.), the Securities Exchange Act of 1934  
8 (15 U.S.C. 78a et seq.), the Trust Indenture Act of  
9 1939 (15 U.S.C. 77aaa et seq.), the Investment  
10 Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the  
11 Investment Advisers Act of 1940 (15 U.S.C. 80b et  
12 seq.), and the Securities Investor Protection Act of  
13 1970 (15 U.S.C. 78aaa et seq.).

14 (3) REPORTING ISSUER.—The term “reporting  
15 issuer” means any registrant under section 12 of the  
16 Securities Exchange Act of 1934 (15 U.S.C. 78l) or  
17 any other issuer required to file periodic reports  
18 under section 13 or 15 of such Act (15 U.S.C. 78m,  
19 78o).

