

108TH CONGRESS
2D SESSION

S. 2045

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2004

Mrs. BOXER introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, 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 “Secure and Verifiable Electronic Voting Act of 2004” or
6 the “SAVE Voting Act of 2004”.

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

Sec. 1. Short title; table of contents.

- Sec. 2. Promoting accuracy, integrity, and security through voter-verified permanent record or hard copy.
- Sec. 3. Extension of time provided for States to request payments under title I.
- Sec. 4. Change in deadline for compliance with standards.
- Sec. 5. Requirement for Federal certification of technological security of voter registration lists.
- Sec. 6. Requirement for mandatory recounts.
- Sec. 7. Security standards for manufacturers of federally certified voting systems.
- Sec. 8. Repeal of exemption of Election Assistance Commission from certain Government contracting requirements.
- Sec. 9. Effective date.

1 **SEC. 2. PROMOTING ACCURACY, INTEGRITY, AND SECUR-**
 2 **RITY THROUGH VOTER-VERIFIED PERMA-**
 3 **NENT RECORD OR HARD COPY.**

4 (a) IN GENERAL.—Section 301(a)(2) of the Help
 5 America Vote Act of 2002 (42 U.S.C. 15481(a)(2)) is
 6 amended to read as follows:

7 “(2) VOTER-VERIFICATION AND MANUAL AUDIT
 8 CAPACITY.—

9 “(A) VOTER-VERIFICATION.—The voting
 10 system shall produce a voter-verified paper
 11 record suitable for a manual audit equivalent or
 12 superior to that of a paper ballot voting system
 13 and that meets the requirements of subpara-
 14 graph (B).

15 “(B) MANUAL AUDIT CAPACITY.—

16 “(i) The voting system shall produce a
 17 permanent paper record, each individual
 18 paper record of which shall be made avail-
 19 able for inspection and verification by the

1 voter at the time the vote is cast, and pre-
2 served within the polling place in the man-
3 ner in which all other paper ballots are
4 preserved within the polling place on Elec-
5 tion Day for later use in any manual audit.

6 “(ii) The voting system shall provide
7 the voter with an opportunity to correct
8 any error made by the system before the
9 permanent record is preserved for use in
10 any manual audit.

11 “(iii) The voter-verified paper record
12 produced under subparagraph (A) and this
13 subparagraph shall be available as an offi-
14 cial record and shall be the official record
15 used for any recount conducted with re-
16 spect to any election in which the system
17 is used.

18 “(iv) The voter-verified paper record
19 produced under subparagraph (A) and this
20 subparagraph may not be produced on
21 thermal paper.

22 “(C) SOFTWARE AND MODEMS.—

23 “(i) No voting system shall at any
24 time contain or use undisclosed software.
25 Any voting system containing or using

software shall disclose the source code of that software to the Commission, and the Commission shall make that source code available for inspection upon request to any citizen.

“(ii) No voting system shall contain any wireless communication device at all.

“(iii) All software and hardware used in any electronic voting system shall be certified by laboratories accredited by the Commission as meeting the requirements of clauses (i) and (ii).”.

(b) VOTER VERIFICATION OF RESULTS FOR INDIVIDUALS WITH DISABILITIES.—Section 301(a)(3) of such Act (42 U.S.C. 15481(a)(3)) is amended—

(1) in the heading, by inserting “AND VOTER-VERIFICATION OF RESULTS” after “ACCESSIBILITY”;

(2) in subparagraph (B), by inserting before “; and” the following: “, and such voting system shall provide a mechanism for voter-verification of results and manual audit capacity in a manner analogous to the manner required under subparagraphs (A) and (B) of paragraph (2), but that does not require the use of paper”; and

1 (3) by amending subparagraph (C) to read as
2 follows:

3 “(C) meet the voting system standards for
4 disability access and voter-verification of results
5 as outlined in this paragraph in accordance
6 with the deadline described in subsection (d),
7 except that, if it does not and a paper ballot
8 voting system is used on an interim basis in ac-
9 cordance with section 102(a)(3)(B), any indi-
10 vidual who requires assistance to vote by reason
11 of blindness, disability, or inability to read or
12 write shall have the option of using such voting
13 system with the assistance of a person chosen
14 by that individual in accordance with section
15 208 of the Voting Rights Act of 1965 or using
16 the voting system otherwise put in place for use
17 by voters at the time in question in accordance
18 with this Act, as in effect prior to the enact-
19 ment of the Secure and Verifiable Electronic
20 Voting Act of 2004, except that ‘2006’ shall be
21 substituted for ‘2007’ in section 301(a)(3)(C).”.

22 (c) NOTIFICATION OF RIGHT TO ASSISTANCE OF AN
23 AIDE.—Section 302(b)(2) of the Help America Vote Act
24 of 2002 (42 U.S.C. 15482(b)(2)) is amended—

1 (1) in subparagraph (E), by striking “and”
 2 after the semicolon at the end;

3 (2) in subparagraph (F), by striking the period
 4 at the end and inserting “; and”; and

5 (3) by adding at the end the following new sub-
 6 paragraph:

7 “(G) information on the right of any indi-
 8 vidual who requires assistance to vote by reason
 9 of blindness, disability, or inability to read or
 10 write to be given assistance by a person chosen
 11 by that individual under section 208 of the Vot-
 12 ing Rights Act of 1965.”.

13 (d) VOTER-VERIFICATION AND AUDIT CAPACITY
 14 FUNDING.—Title II of the Help America Vote Act of 2002
 15 is amended by adding at the end the following new part:

16 **“PART 7—VOTER-VERIFICATION AND AUDIT**
 17 **CAPACITY FUNDING**

18 **“SEC. 271. VOTER-VERIFICATION AND AUDIT CAPACITY**
 19 **FUNDING.**

20 “(a) PAYMENTS TO STATES.—Subject to subsection
 21 (b), not later than the date that is 30 days after the date
 22 of the enactment of the Secure and Verifiable Electronic
 23 Voting Act of 2004, the Election Assistance Commission
 24 shall pay to each State an amount to assist the State in
 25 paying for the implementation of the voter-verification and

1 audit capacity requirements of paragraphs (2) and (3) of
2 section 301(a), as amended by subsections (a) and (b) of
3 section 2 of the Secure and Verifiable Electronic Voting
4 Act of 2004.

5 “(b) LIMITATION.—The amount paid to a State
6 under subsection (a) for each voting system purchased by
7 a State may not exceed the average cost of adding a print-
8 er to each type of voting system that the State could have
9 purchased to meet the requirements described in such sub-
10 section.

11 **“SEC. 272. APPROPRIATION.**

12 “Such sums are appropriated to the Election Assist-
13 ance Commission, without fiscal year limitation, as may
14 be necessary to make payments to States in accordance
15 with section 271(a).”.

16 (e) SPECIFIC, DELINEATED REQUIREMENT OF
17 STUDY, TESTING, AND DEVELOPMENT OF BEST PRAC-
18 TICES.—In addition to any other requirements under the
19 Help America Vote Act of 2002, the Election Assistance
20 Commission shall study, test, and develop best practices
21 to enhance accessibility and voter-verification mechanisms
22 for disabled voters.

1 **SEC. 3. EXTENSION OF TIME PROVIDED FOR STATES TO RE-**
 2 **QUEST PAYMENTS UNDER TITLE I.**

3 (a) PAYMENTS FOR ACTIVITIES TO IMPROVE ADMIN-
 4 STRATION OF ELECTIONS.—Section 101(a) of the Help
 5 America Vote Act of 2002 (42 U.S.C. 15301(a)) is amend-
 6 ed by striking “not later than 6 months after the date
 7 of the enactment of this Act” and inserting “not later than
 8 the Tuesday next after the first Monday in November
 9 2004”.

10 (b) PAYMENTS FOR REPLACEMENT OF PUNCH CARD
 11 OR LEVER VOTING MACHINES.—Section 102(b)(1) of the
 12 Help America Vote Act of 2002 (42 U.S.C. 15301(b)(1))
 13 is amended by striking “not later than the date that is
 14 6 months after the date of the enactment of this Act” and
 15 inserting “not later than the Tuesday next after the first
 16 Monday in November 2004”.

17 (c) EXTENSION OF PERIOD OF AUTHORIZATION OF
 18 APPROPRIATIONS.—

19 (1) IN GENERAL.—Section 104(a) of the Help
 20 America Vote Act of 2002 (42 U.S.C. 15304(a)) is
 21 amended by striking “\$650,000,000” and inserting
 22 “an aggregate amount of \$650,000,000 for fiscal
 23 years 2003 through 2005”.

24 (2) DATE FOR TRANSFER TO ELECTION ASSIST-
 25 ANCE COMMISSION OF UNOBLIGATED FUNDS.—Sec-
 26 tion 104(c)(2)(B) of the Help America Vote Act of

1 2002 (42 U.S.C. 15304(c)(2)(B)) is amended by
 2 striking “September 1, 2003” and inserting “Janu-
 3 ary 1, 2005”.

4 (d) REQUIREMENT TO DEPLOY INTERIM MEASURE
 5 IF WAIVER REQUESTED.—Section 102(a)(3)(B) of the
 6 Help America Vote Act of 2002 (42 U.S.C.
 7 15301(a)(3)(B)) is amended by striking the period at the
 8 end and inserting the following: “, except that any State
 9 requesting any such waiver shall accept and implement a
 10 paper ballot voting system for use on an interim basis as
 11 provided in section 4(b) of the Secure and Verifiable Elec-
 12 tronic Voting Act of 2004 in time for use in the regularly
 13 scheduled general election for Federal office held in No-
 14 vember 2004.”.

15 **SEC. 4. CHANGE IN DEADLINE FOR COMPLIANCE WITH**
 16 **STANDARDS.**

17 (a) IN GENERAL.—Section 301(d) of the Help Amer-
 18 ica Vote Act of 2002 (42 U.S.C. 15481(d)) is amended
 19 by striking “on and after January 1, 2006” and inserting
 20 “in time for elections for Federal office beginning with the
 21 regularly scheduled general election to be held in Novem-
 22 ber 2004”.

23 (b) INTERIM PAPER BALLOT VOTING SYSTEM.—Sec-
 24 tion 301 of the Help America Vote Act of 2002 (42 U.S.C.

1 15481(d)) is amended by adding at the end the following
 2 new subsection:

3 “(e) INTERIM PAPER BALLOT VOTING SYSTEM.—
 4 Each State and jurisdiction that certifies by July 1, 2004,
 5 in a manner similar to the manner described in section
 6 102(a)(3)(B) that it is unable to comply with the require-
 7 ments of section 301, as amended by the Secure and
 8 Verifiable Electronic Voting Act of 2004, in time for the
 9 regularly scheduled general election for Federal office to
 10 be held in November 2004 shall use a paper ballot voting
 11 system, based on paper ballot voting systems in use in the
 12 jurisdiction, if any, that shall be deemed compliant with
 13 section 301 by the Commission for use in the November
 14 2004 general elections. The Commission shall reimburse
 15 the State or jurisdiction for any costs incurred in using
 16 such a system.”.

17 **SEC. 5. REQUIREMENT FOR FEDERAL CERTIFICATION OF**
 18 **TECHNOLOGICAL SECURITY OF VOTER REG-**
 19 **ISTRATION LISTS.**

20 Section 303(a)(3) of the Help America Vote Act of
 21 2002 (42 U.S.C. 15483(a)(3)) is amended by striking
 22 “measures to prevent the” and inserting “measures, as
 23 certified by the Election Assistance Commission, to pre-
 24 vent”.

1 **SEC. 6. REQUIREMENT FOR MANDATORY RECOUNTS.**

2 The Election Assistance Commission shall conduct
 3 unannounced manual recounts of the voter-verified records
 4 of each election for Federal office (and, at the option of
 5 the State or jurisdiction involved, elections for State and
 6 local office) in 0.5 percent of the jurisdictions in each
 7 State (as defined in section 901 of the Help America Vote
 8 Act of 2002) and, including overseas voters (as defined
 9 in section 107(5) of the Uniformed and Overseas Citizens
 10 Absentee Voting Act), immediately following each general
 11 election for Federal office and shall promptly publish the
 12 results of those recounts. The treatment of the results of
 13 the recount shall be governed by applicable Federal, State,
 14 or local law.

15 **SEC. 7. SECURITY STANDARDS FOR MANUFACTURERS OF**
 16 **FEDERALLY CERTIFIED VOTING SYSTEMS.**

17 (a) IN GENERAL.—Section 301(a) of the Help Amer-
 18 ica Vote Act of 2002 (42 U.S.C. 15481(a)) is amended
 19 by adding at the end the following new paragraph:

20 “(7) SECURITY STANDARDS FOR MANUFACTUR-
 21 ERS OF VOTING SYSTEMS USED IN FEDERAL ELEC-
 22 TIONS.—

23 “(A) IN GENERAL.—No voting system may
 24 be used in an election for Federal office unless
 25 the manufacturer of such system meets the re-
 26 quirements described in subparagraph (B).

1 “(B) REQUIREMENTS DESCRIBED.—The
2 requirements described in this subparagraph
3 are as follows:

4 “(i) The manufacturer shall conduct
5 background checks on individuals who are
6 programmers and developers before such
7 individuals work on any software used in
8 connection with the voting system.

9 “(ii) The manufacturer shall docu-
10 ment the chain of custody for the handling
11 of software used in connection with voting
12 systems.

13 “(iii) The manufacturer shall ensure
14 that any software used in connection with
15 the voting system is not transferred over
16 the Internet.

17 “(iv) The manufacturer shall provide
18 the codes used in any software used in con-
19 nection with the voting system to the Com-
20 mission and may not alter such codes once
21 certification has occurred unless such sys-
22 tem is recertified.

23 “(v) The manufacturer shall imple-
24 ment procedures to ensure internal secu-
25 rity, as required by the Director of the Na-

1 tional Institute of Standards and Tech-
2 nology.

3 “(vi) The manufacturer shall meet
4 such other requirements as may be estab-
5 lished by the Director of the National In-
6 stitute of Standards and Technology.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall apply with respect to voting systems
9 used on and after the date of the regularly sched-
10 eral election for Federal office held in November 2004.

11 **SEC. 8. REPEAL OF EXEMPTION OF ELECTION ASSISTANCE**
12 **COMMISSION FROM CERTAIN GOVERNMENT**
13 **CONTRACTING REQUIREMENTS.**

14 (a) IN GENERAL.—Section 205 of the Help America
15 Vote Act of 2002 (42 U.S.C. 15325) is amended by strik-
16 ing subsection (e).

17 (b) EFFECTIVE DATE.—The amendment made by
18 subsection (a) shall apply with respect to contracts entered
19 into by the Election Assistance Commission on or after
20 the date of the enactment of this Act.

21 **SEC. 9. EFFECTIVE DATE.**

22 Except as provided in sections 7(b) and 8(b), the
23 amendments made by this Act shall take effect as if in-

1 cluded in the enactment of the Help America Vote Act
2 of 2002.

