

108TH CONGRESS
2D SESSION

S. 2313

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

APRIL 8, 2004

Mr. GRAHAM of Florida (for himself, Mrs. CLINTON, Mrs. BOXER, Mr. NELSON of Florida, Mr. SCHUMER, Mr. LAUTENBERG, Mr. HOLLINGS, and Mrs. LINCOLN) 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 “Restore Elector Confidence in Our Representative De-
6 mocracy Act of 2004” or the “RECORD 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 preservation of a voter-verified permanent record or hard copy.
- Sec. 3. Change in deadline for compliance with standards.
- Sec. 4. Extension of Help America Vote Act waiver request deadline; requirement to deploy interim paper ballot voting system.
- Sec. 5. Requirement for Federal certification of technological security of voter registration lists.
- Sec. 6. Repeal of exemption of Election Assistance Commission from certain Government contracting requirements.
- Sec. 7. Requirement for mandatory recounts.
- Sec. 8. Specific, delineated requirement of study, testing, and development of best practices.
- Sec. 9. Voter verification and audit capacity funding.
- Sec. 10. Reports and provision of security consultation services.
- Sec. 11. Effective date.

1 **SEC. 2. PROMOTING ACCURACY, INTEGRITY, AND SECUR-**
 2 **ITY THROUGH PRESERVATION OF A VOTER-**
 3 **VERIFIED PERMANENT RECORD OR HARD**
 4 **COPY.**

5 (a) VOTER VERIFICATION AND MANUAL AUDIT CA-
 6 PACITY.—

7 (1) IN GENERAL.—Section 301(a)(2) of the
 8 Help America Vote Act of 2002 (42 U.S.C.
 9 15481(a)(2)) is amended to read as follows:

10 “(2) VOTER VERIFICATION AND MANUAL AUDIT
 11 CAPACITY.—

12 “(A) VOTER VERIFICATION.—

13 “(i) The voting system shall produce
 14 an individual voter-verifiable paper record
 15 of the vote that shall be made available for
 16 inspection and verification by the voter at
 17 the time the vote is cast.

1 “(ii) The voting system shall provide
2 the voter with an opportunity to correct
3 any error made by the system in the voter-
4 verifiable paper record before the perma-
5 nent voter-verified paper record is pre-
6 served in accordance with subparagraph
7 (B)(i).

8 “(B) MANUAL AUDIT CAPACITY.—The per-
9 manent voter verified paper record produced in
10 accordance with subparagraph (A) shall—

11 “(i) be preserved within the polling
12 place, in the manner, if any, in which all
13 other paper ballots are preserved within
14 that polling place, or, in the manner em-
15 ployed by the jurisdiction for preserving
16 paper ballots in general, for later use in
17 any manual audit;

18 “(ii) be suitable for a manual audit
19 equivalent or superior to that of a paper
20 ballot voting system; and

21 “(iii) be available as an official record
22 and shall be the official record used for
23 any recount conducted with respect to any
24 election in which the system is used.”.

1 (2) PROHIBITION OF USE OF THERMAL
 2 PAPER.—Section 301(a) of the Help America Vote
 3 Act of 2002 (42 U.S.C. 15481(a)) is amended by
 4 adding at the end the following new paragraph:

5 “(7) PROHIBITION OF USE OF THERMAL
 6 PAPER.—The permanent voter verified paper record
 7 produced in accordance with paragraph (2)(A) shall
 8 not be produced on thermal paper, but shall instead
 9 be produced on paper of archival quality.”.

10 (3) CONFORMING AMENDMENT.—Section
 11 301(a)(1)(A)(ii) of the Help America Vote Act (42
 12 U.S.C. 15481(a)(1)(A)(ii)) is amended by inserting
 13 “and before the permanent paper record is produced
 14 under paragraph (2)” before the semicolon at the
 15 end.

16 (b) VOTER VERIFICATION OF RESULTS FOR INDIVID-
 17 UALS WITH DISABILITIES.—Section 301(a)(3) of the
 18 Help America Vote Act of 2002 (42 U.S.C. 15481(a)(3))
 19 is amended to read as follows:

20 “(3) ACCESSIBILITY AND VOTER-VERIFICATION
 21 OF RESULTS FOR INDIVIDUALS WITH DISABIL-
 22 ITIES.—

23 “(A) IN GENERAL.—Subject to subpara-
 24 graph (B), the voting system shall—

1 “(i) be accessible for individuals with
2 disabilities, including nonvisual accessi-
3 bility for the blind and visually impaired,
4 in a manner that provides the same oppor-
5 tunity for access and participation (includ-
6 ing privacy and independence) as for other
7 voters;

8 “(ii) satisfy the requirement of sub-
9 paragraph (A) through the use of at least
10 one direct recording electronic voting sys-
11 tem or other voting system equipped for
12 individuals with disabilities at each polling
13 place, and such voting system shall meet
14 the requirements of paragraph (2)(A) by
15 using a mechanism that separates the
16 function of vote generation from the func-
17 tion of vote casting without requiring the
18 voter to view or handle paper; and

19 “(iii) if purchased with funds made
20 available under title II on or after January
21 1, 2006, meet the voting system standards
22 for disability access (as outlined in this
23 subparagraph).

24 “(B) TRANSITIONAL COMPLIANCE.—If an
25 interim paper ballot voting system is deployed

in accordance with section 102(a)(3)(C), with respect to any election for Federal office held on or after the date of the enactment of the Restore Elector Confidence in Our Representative Democracy Act of 2004 and before January 1, 2006, individuals with disabilities shall have the option of using such interim paper ballot voting system, any voting system purchased by the State or jurisdiction with funds made available under section 102, or any other voting system used by the State or jurisdiction before the date of the enactment of the Restore Elector Confidence in our Representative Democracy Act of 2004 that may be accessible for individuals with disabilities. Nothing in this paragraph shall be construed to waive the disability access requirements of this Act or the Voting Rights Act of 1965.”.

(c) ADDITIONAL VOTING SYSTEM REQUIREMENTS.—

Section 301(a) of the Help America Vote Act of 2002 (42 U.S.C. 15481(a)), as amended by subsection (a)(2), is amended by adding to the end the following new paragraphs:

“(8) INSTRUCTION OF ELECTION OFFICIALS.—

Each State shall ensure that election officials are in-

1 structed on the right of any individual who requires
2 assistance to vote by reason of blindness, other dis-
3 ability, or inability to read or write to be given as-
4 sistance by a person chosen by that individual under
5 section 208 of the Voting Rights Act of 1965.

6 “(9) PROHIBITION OF USE OF UNDISCLOSED
7 SOFTWARE IN VOTING SYSTEMS.—No voting system
8 shall at any time contain or use any undisclosed
9 software. Any voting system containing or using
10 software shall disclose the source code, object code,
11 and executable representation of that software to the
12 Commission, and the Commission shall make that
13 source code, object code, and executable representa-
14 tion available for inspection upon request to any cit-
15 izen.

16 “(10) PROHIBITION OF USE OF WIRELESS COM-
17 MUNICATIONS DEVICES IN VOTING SYSTEMS.—No
18 voting system shall use any wireless communication
19 device.

20 “(11) CERTIFICATION OF SOFTWARE AND
21 HARDWARE.—All software and hardware used in any
22 electronic voting system shall be certified by labora-
23 tories accredited by the Commission as meeting the
24 requirements of paragraphs (9) and (10).

1 “(12) SECURITY STANDARDS FOR MANUFAC-
2 TURERS OF VOTING SYSTEMS USED IN FEDERAL
3 ELECTIONS.—

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

8 “(B) REQUIREMENTS DESCRIBED.—The
9 requirements described in this subparagraph
10 are as follows:

11 “(i) The manufacturer shall document
12 the chain of custody for the handling of
13 software used in connection with voting
14 systems.

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

19 “(iii) In the same manner and to the
20 same extent described in paragraph (9),
21 the manufacturer shall provide the codes
22 used in any software used in connection
23 with the voting system to the Commission
24 and may not alter such codes once certifi-

1 cation has occurred unless such system is
 2 recertified.

3 “(iv) The manufacturer shall imple-
 4 ment procedures to ensure internal secu-
 5 rity, as required by the Director of the Na-
 6 tional Institute of Standards and Tech-
 7 nology.

8 “(v) The manufacturer shall meet
 9 such other requirements as may be estab-
 10 lished by the Director of the National In-
 11 stitute of Standards and Technology.”.

12 **SEC. 3. CHANGE IN DEADLINE FOR COMPLIANCE WITH**
 13 **STANDARDS.**

14 Section 301(d) of the Help America Vote Act of 2002
 15 (42 U.S.C. 15481(d)) is amended to read as follows:

16 “(d) EFFECTIVE DATE.—Each State and jurisdiction
 17 shall be required to comply with—

18 “(1) the requirements of paragraphs (1), (2),
 19 (3)(B), (8), (9), and (10) of section 301(a) in time
 20 for elections for Federal office beginning with the
 21 regularly scheduled general election to be held in
 22 November 2004; and

23 “(2) the other requirements of this section on
 24 and after January 1, 2006.”.

1 **SEC. 4. EXTENSION OF HELP AMERICA VOTE ACT WAIVER**
 2 **REQUEST DEADLINE; REQUIREMENT TO DE-**
 3 **PLOY INTERIM PAPER BALLOT VOTING SYS-**
 4 **TEM.**

5 (a) EXTENSION OF HELP AMERICA VOTE ACT WAIV-
 6 ER REQUEST DEADLINE.—Section 102(a)(3)(B) of the
 7 Help America Vote Act of 2002 (42 U.S.C.
 8 15302(a)(3)(b)) is amended by striking “January 1,
 9 2004” and inserting “August 1, 2004”.

10 (b) REQUIREMENT TO DEPLOY INTERIM PAPER
 11 BALLOT VOTING SYSTEM.—Section 102(a)(3) of the Help
 12 America Vote Act of 2002 (42 U.S.C. 15302(a)(3)) is
 13 amended by adding at the end the following new subpara-
 14 graphs:

15 “(C) If a State either requests the waiver
 16 described in subparagraph (B) or is unable to
 17 comply with the requirements of section 301
 18 that are due by November 2004 in accordance
 19 with the deadline set forth in section 301(d),
 20 the State shall use a paper ballot voting system
 21 in November 2004 and, so long as such inabil-
 22 ity continues, at any time in 2005 that complies
 23 with such requirements of section 301, based on
 24 paper ballot voting systems in use in the juris-
 25 diction, if any, that shall be deemed compliant
 26 with such requirements of section 301 by the

1 Commission for use in any Federal election be-
2 tween and including the general election in No-
3 vember 2004 and the last Federal election in
4 2005. The Commission shall reimburse the
5 State or jurisdiction for any costs incurred in
6 using such interim paper ballot voting system.

7 “(D) The Commission will certify voting
8 equipment that meets the requirements of sec-
9 tion 301. States must use certified voting
10 equipment, or the interim paper ballot system
11 described in subparagraph (C), or apply to the
12 Commission for a waiver which the Commission
13 may grant if the State demonstrates that it is
14 technologically impossible to comply with such
15 requirements. States receiving such a waiver
16 shall submit reports to the Commission dem-
17 onstrating the steps the State is taking to rem-
18 edy the technological impossibility.”.

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

22 Section 303(a)(3) of the Help America Vote Act of
23 2002 (42 U.S.C. 15483(a)(3)) is amended by striking
24 “measures to prevent the” and inserting “measures, as

1 certified by the Election Assistance Commission, to pre-
2 vent”.

3 **SEC. 6. REPEAL OF EXEMPTION OF ELECTION ASSISTANCE**
4 **COMMISSION FROM CERTAIN GOVERNMENT**
5 **CONTRACTING REQUIREMENTS.**

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

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

13 **SEC. 7. REQUIREMENT FOR MANDATORY RECOUNTS.**

14 Beginning with the regularly scheduled election for
15 Federal office to be held in November 2004, the Election
16 Assistance Commission shall conduct random unan-
17 nounced manual mandatory recounts of the voter-verified
18 records of each election for Federal office (and, at the op-
19 tion of the State or jurisdiction involved, of elections for
20 State and local office held at the same time as such an
21 election for Federal office) in 2 percent of the jurisdictions
22 in each State and with respect to 2 percent of the ballots
23 cast by uniformed and overseas voters immediately fol-
24 lowing the election and shall promptly publish the results
25 of those recounts in the Federal Register. In addition, the

1 verification system used by the Election Assistance Com-
 2 mission shall meet the error rate standards described in
 3 section 301(a)(5) of the Help America Vote Act of 2002.

4 **SEC. 8. SPECIFIC, DELINEATED REQUIREMENT OF STUDY,**
 5 **TESTING, AND DEVELOPMENT OF BEST PRAC-**
 6 **TICES.**

7 Subtitle C of title II of the Help America Vote Act
 8 of 2002 (42 U.S.C. 15381 et seq.) is amended by—

9 (1) redesignating section 247 as section 248;
 10 and

11 (2) by inserting after section 246 the following
 12 new section:

13 **“SEC. 247. STUDY, TESTING, AND DEVELOPMENT OF BEST**
 14 **PRACTICES TO ENHANCE ACCESSIBILITY**
 15 **AND VOTER-VERIFICATION MECHANISMS**
 16 **FOR DISABLED VOTERS.**

17 “The Election Assistance Commission shall study,
 18 test, and develop best practices to enhance accessibility
 19 and voter-verification mechanisms for individuals with dis-
 20 abilities.”.

21 **SEC. 9. VOTER VERIFICATION AND AUDIT CAPACITY FUND-**
 22 **ING.**

23 Title II of the Help America Vote Act of 2002 (42
 24 U.S.C. 15321 et seq.) is amended by adding at the end
 25 the following new part:

1 **“PART 7—VOTER-VERIFICATION AND AUDIT**

2 **CAPACITY FUNDING**

3 **“SEC. 297. VOTER-VERIFICATION AND AUDIT CAPACITY**

4 **FUNDING.**

5 “(a) PAYMENTS TO STATES.—Subject to subsection
6 (b), not later than the date that is 30 days after the date
7 of the enactment of the Restore Elector Confidence in Our
8 Representative Democracy Act of 2004, the Election As-
9 sistance Commission shall pay to each State an amount
10 to assist the State in paying for the implementation of
11 the voter-verification and audit capacity requirements of
12 paragraphs (2) and (3) of section 301(a), as amended by
13 subsections (a) and (b) of section 2 of such Act.

14 “(b) LIMITATION.—The amount paid to a State
15 under subsection (a) for each voting system purchased by
16 a State may not exceed the average cost of adding a print-
17 er with accessibility features to each type of voting system
18 that the State could have purchased to meet the require-
19 ments described in such subsection.

20 **“SEC. 298. APPROPRIATION.**

21 “There are authorized and appropriated
22 \$150,000,000 to the Election Assistance Commission,
23 without fiscal year limitation, to make payments to States
24 in accordance with section 297(a). In addition, there are
25 authorized and appropriated \$5,000,000 to the Election
26 Assistance Commission for each of fiscal years 2004

1 through 2006, in addition to any amounts otherwise ap-
 2 propriated, for providing reimbursement to States and ju-
 3 risdictions for costs incurred in using the interim paper
 4 ballot voting system in accordance with section
 5 102(a)(3)(C). Furthermore, there are authorized and ap-
 6 propriated \$5,000,000 to the Election Assistance Commis-
 7 sion, for each of fiscal years 2004 through 2006, in addi-
 8 tion to any amounts otherwise appropriated for adminis-
 9 trative costs to assist with conducting recounts, the imple-
 10 mentation of voter verification systems, and improved se-
 11 curity measures.”.

12 **SEC. 10. REPORTS AND PROVISION OF SECURITY CON-**
 13 **SULTATION SERVICES.**

14 Subtitle C of title II of the Help America Vote Act
 15 of 2002 (42 U.S.C. 15381 et seq.), as amended by section
 16 8, is amended by—

17 (1) redesignating section 248 as section 249;

18 and

19 (2) by inserting after section 247 the following
 20 new section:

21 **“SEC. 248. REPORTS AND PROVISION OF SECURITY CON-**
 22 **SULTATION SERVICES.**

23 “(a) REPORT TO CONGRESS ON SECURITY RE-
 24 VIEW.—Not later than 6 months after the date of the en-
 25 actment of the Restore Elector Confidence in Our Rep-

1 representative Democracy Act of 2004, the Commission, in
2 consultation with the Director of the National Institute
3 of Standards and Technology, shall submit to Congress
4 a report on a proposed security review and certification
5 process for all voting systems used in elections for Federal
6 office, including a description of the certification process
7 to be implemented under section 231.

8 “(b) REPORT TO CONGRESS ON OPERATIONAL AND
9 MANAGEMENT SYSTEMS.—Not later than 3 months after
10 the date of the enactment of the Restore Elector Con-
11 fidence in Our Representative Democracy Act of 2004, the
12 Commission shall submit to Congress a report on oper-
13 ational and management systems applicable with respect
14 to elections for Federal office, including the security
15 standards for manufacturers described in section
16 301(a)(7), that should be employed to safeguard the secu-
17 rity of voting systems, together with a proposed schedule
18 for the implementation of each such system.

19 “(c) PROVISION OF SECURITY CONSULTATION SERV-
20 ICES.—

21 “(1) IN GENERAL.—On and after the date of
22 the enactment of the Restore Elector Confidence in
23 Our Representative Democracy Act of 2004, the Di-
24 rector of the National Institute of Standards and
25 Technology shall provide security consultation serv-

1 ices to States and local jurisdictions with respect to
2 the administration of elections for Federal office.

3 “(2) APPROPRIATION.—To carry out the pur-
4 poses of paragraph (1), \$2,000,000 is appropriated
5 for each of fiscal years 2004 through 2006.”.

6 **SEC. 11. EFFECTIVE DATE.**

7 Except as provided in section 6(b), the amendments
8 made by this Act shall take effect as if included in the
9 enactment of the Help America Vote Act of 2002.

○