

112TH CONGRESS
2D SESSION

H. R. 6246

To amend the Help America Vote Act of 2002 to require the deposit in the National Software Reference Library of the National Institute of Standards and Technology of a copy of any election-dedicated voting system technology used in the operation of a voting system for an election for Federal office, to establish the conditions under which the Director of the National Institute of Standards and Technology may disclose the technology and information regarding the technology to other persons, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 2012

Mr. JOHNSON of Georgia (for himself, Mr. HOLT, Ms. WILSON of Florida, Mr. HINCHEY, Mr. CONYERS, Mr. CLYBURN, Ms. FUDGE, Ms. EDWARDS, Mr. BARTLETT, and Mr. VAN HOLLEN) introduced the following bill; which was referred to the Committee on House Administration, and in addition to the Committee on Science, Space, and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Help America Vote Act of 2002 to require the deposit in the National Software Reference Library of the National Institute of Standards and Technology of a copy of any election-dedicated voting system technology used in the operation of a voting system for an election for Federal office, to establish the conditions under which the Director of the National Institute of Standards and Technology may disclose the technology

and information regarding the technology to other persons, 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.**

4 This Act may be cited as the “Verifying Official To-
 5 tals for Elections Act”.

6 **SEC. 2. DEPOSIT OF ELECTION-DEDICATED VOTING SYS-**
 7 **TEM TECHNOLOGY IN NATIONAL SOFTWARE**
 8 **REFERENCE LIBRARY.**

9 (a) DEPOSIT REQUIRED; CONDITIONS FOR DISCLO-
 10 SURE.—Section 301(a) of the Help America Vote Act of
 11 2002 (42 U.S.C. 15481(a)) is amended by adding at the
 12 end the following new paragraph:

13 “(7) PROHIBITING USE OF ELECTION-DEDI-
 14 CATED VOTING SYSTEM TECHNOLOGIES NOT DEPOS-
 15 ITED WITH NATIONAL SOFTWARE REFERENCE LI-
 16 BRARY; DISCLOSURE REQUIREMENTS.—

17 “(A) PROHIBITION.—

18 “(i) IN GENERAL.—A voting system
 19 used in an election for Federal office in a
 20 State may not at any time during the elec-
 21 tion contain or use any election-dedicated
 22 voting system technology which is not de-
 23 posited by the State (or, at the option of
 24 the State, by the vendor of the technology)

1 with the National Software Reference Li-
2 brary of the National Institute of Stand-
3 ards and Technology prior to the date of
4 the election, to be held in escrow and sub-
5 ject to disclosure in accordance with sub-
6 paragraph (B).

7 “(ii) EXTENSION OF DEADLINE FOR
8 DEPOSIT.—If the chief State election offi-
9 cial certifies to the Director of the Na-
10 tional Institute of Standards and Tech-
11 nology prior to the date of the election
12 that, because of a revision to the election-
13 dedicated voting system technology which
14 is made less than 30 days prior to the date
15 of the election, the State or vendor is un-
16 able to deposit the technology in accord-
17 ance with clause (i) prior to the date of the
18 election, the voting system used in the elec-
19 tion may contain or use the technology if—

20 “(I) the chief State election offi-
21 cial approves the use of the technology
22 for the election; and

23 “(II) the State or vendor deposits
24 the technology in accordance with

1 clause (i) not later than 1 week after
2 the date of the election.

3 “(iii) ENFORCEMENT OF VENDOR RE-
4 SPONSIBILITIES.—If a State opts to re-
5 quire the vendor of election-dedicated vot-
6 ing system technology to deposit the tech-
7 nology in accordance with this subpara-
8 graph and the vendor fails to do so, the
9 Attorney General may bring a civil action
10 against the vendor in an appropriate dis-
11 trict court for such relief as may be appro-
12 priate, including injunctive relief or an
13 order for a civil penalty in an amount not
14 to exceed \$500,000.

15 “(B) REQUIREMENT FOR DISCLOSURE AND
16 LIMITATION ON RESTRICTING DISCLOSURE.—
17 With respect to any election-dedicated voting
18 system technology which is deposited under
19 subparagraph (A), the Director of the National
20 Institute of Standards and Technology shall—

21 “(i) hold the technology in escrow;
22 and

23 “(ii) disclose technology and informa-
24 tion regarding the technology to another
25 person if—

1 “(I) the person is a qualified per-
2 son described in subparagraph (C)
3 who has entered into a nondisclosure
4 agreement with respect to the tech-
5 nology which meets the requirements
6 of subparagraph (D); or

7 “(II) the Director is permitted or
8 required to disclose the technology to
9 the person under the law of the appli-
10 cable State, in accordance with the
11 terms and conditions applicable under
12 such law.

13 “(C) QUALIFIED PERSONS DESCRIBED.—
14 With respect to the disclosure of election-dedi-
15 cated voting system technology under subpara-
16 graph (B)(ii)(I), a ‘qualified person’ is any of
17 the following:

18 “(i) A governmental entity with re-
19 sponsibility for the administration of vot-
20 ing and election-related matters in elec-
21 tions for Federal office, for purposes of re-
22 viewing, analyzing, or reporting on the
23 technology.

24 “(ii) If permitted under a court order,
25 a party to post-election litigation chal-

1 lenging the result of an election or the ad-
2 ministration or use of the technology used
3 in an election, but only to the extent per-
4 mitted under the terms and conditions of
5 such court order.

6 “(iii) A person who reviews, analyzes,
7 or reports on the technology solely for an
8 investigation or inquiry concerning the ac-
9 curacy or integrity of the technology pur-
10 suant to clause (i) or (ii).

11 “(D) REQUIREMENTS FOR NONDISCLO-
12 SURE AGREEMENTS.—A nondisclosure agree-
13 ment entered into with respect to an election-
14 dedicated voting system technology meets the
15 requirements of this subparagraph if the agree-
16 ment—

17 “(i) is limited in scope to coverage of
18 the technology disclosed under subpara-
19 graph (B) and any trade secrets and intel-
20 lectual property rights related thereto;

21 “(ii) does not prohibit a signatory
22 from entering into other nondisclosure
23 agreements to review other technologies
24 under this paragraph;

1 “(iii) exempts from coverage both in-
2 formation the signatory lawfully obtained
3 from another source and information in
4 the public domain;

5 “(iv) remains in effect for not longer
6 than the life of any trade secret or other
7 intellectual property right related thereto;

8 “(v) prohibits the request or use of in-
9 junctions that bar a signatory from car-
10 rying out any activity authorized under
11 subparagraph (C), including injunctions
12 limited to the period prior to a judicial
13 proceeding involving the technology;

14 “(vi) is silent as to damages awarded
15 for breach of the agreement, other than a
16 reference to damages available under appli-
17 cable law;

18 “(vii) allows disclosure of evidence re-
19 lating to possible criminal conduct or other
20 violations of law, including in response to
21 a subpoena or warrant;

22 “(viii) allows disclosures and testi-
23 mony to legislative branch authorities, ju-
24 dicial proceedings, and executive branch in-
25 vestigations in response to a subpoena or

warrant or as otherwise provided by law;
and

“(ix) provides that the agreement
shall be governed by the trade secret laws
of the applicable State.

“(E) ELECTION-DEDICATED VOTING SYS-
TEM TECHNOLOGY DEFINED.—For purposes of
this paragraph:

“(i) IN GENERAL.—The term ‘elec-
tion-dedicated voting system technology’
means the following:

“(I) The source code used for the
trusted build and the file signatures
for the trusted build.

“(II) A complete disk image of
the pre-build, build environment, and
any file signatures to validate that it
is unmodified.

“(III) A complete disk image of
the post-build, build environment, and
any file signatures to validate that it
is unmodified.

“(IV) All executable code pro-
duced by the trusted build and any

1 file signatures to validate that it is
2 unmodified.

3 “(V) Installation devices and
4 software file signatures.

5 “(ii) EXCLUSION.—Such term does
6 not include ‘commercial-off-the-shelf’ soft-
7 ware and hardware defined under the vol-
8 untary voting system guidelines adopted by
9 the Commission under section 222 which
10 are in effect as of the date of the election
11 involved.

12 “(F) TRUSTED BUILD DEFINED.—For
13 purposes of this paragraph, the term ‘trusted
14 build’ means a witnessed software build in
15 which source code is converted to machine-read-
16 able binary instructions (executable code) in a
17 manner providing security measures that help
18 ensure that the executable code is a verifiable
19 and faithful representation of the source code.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply with respect to elections occurring
22 during 2013 or any succeeding year.

1 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS FOR NA-**
2 **TIONAL INSTITUTE OF STANDARDS AND**
3 **TECHNOLOGY.**

4 There are authorized to be appropriated to the Na-
5 tional Institute of Standards and Technology for each fis-
6 cal year such sums as may be necessary to enable the In-
7 stitute, including the National Software Reference Library
8 of the Institute, to carry out paragraph (7) of section
9 301(a) of the Help America Vote Act of 2002, as added
10 by section 2(a).

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