

114TH CONGRESS
2D SESSION

H. R. 5131

To amend the Help America Vote Act of 2002 to make improvements to voting system technology, election official training, and protecting voting system source code.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2016

Mr. JOHNSON of Georgia (for himself, Ms. PLASKETT, Mr. HASTINGS, Mr. RICHMOND, Ms. JACKSON LEE, Mr. DOGGETT, Mrs. WATSON COLEMAN, Mr. COHEN, Ms. PINGREE, and Mr. VEASEY) 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 make improvements to voting system technology, election official training, and protecting voting system source code.

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 Optimal
5 Tools for Elections Act of 2016” or the “VOTE Act of
6 2016”.

1 **SEC. 2. PAYMENTS TO STATES TO REPLACE OUTDATED**
 2 **VOTING MACHINES.**

3 (a) IN GENERAL.—Subtitle D of title II of the Help
 4 America Vote Act of 2002 (52 U.S.C. 21001 et seq.) is
 5 amended by adding at the end the following:

6 **“PART 7—OUTDATED VOTING MACHINES**
 7 **“SEC. 297. REPLACEMENT OF OUTDATED VOTING MA-**
 8 **CHINES.**

9 “(a) IN GENERAL.—Not later than 45 days after the
 10 date of the enactment of the Verifying Optimal Tools for
 11 Elections Act of 2016, the Election Assistance Commis-
 12 sion (referred to in this section as the ‘Commission’) shall
 13 make a payment to each State eligible under subsection
 14 (b) in which a precinct within that State used at least one
 15 outdated voting machine to administer the regularly
 16 scheduled general election for Federal office held in No-
 17 vember 2012 (in this section referred to as a ‘qualifying
 18 precinct’).

19 “(b) ELIGIBILITY.—A State is eligible to receive a
 20 payment under the program under this section if the
 21 State, not later than 6 months after the date of the enact-
 22 ment of the Verifying Optimal Tools for Elections Act of
 23 2016, submits to the Commission a notice that contains
 24 such information as the Commission may require which
 25 are necessary for the administration of the program.

1 “(c) USE OF FUNDS.—A State shall use the funds
2 provided under a payment under this section (either di-
3 rectly or as reimbursement, including as reimbursement
4 for costs incurred on or after July 30, 2016, under
5 multiyear contracts) to replace outdated voting machines
6 in qualifying precincts within that State with voting ma-
7 chines (by purchase, lease, or such other arrangement as
8 may be appropriate) that—

9 “(1)(A) have never been used in any general
10 election for Federal office and are not outdated vot-
11 ing machines; or

12 “(B) have been used only with respect to gen-
13 eral elections for Federal office held after November
14 2012; and

15 “(2) are auditable (as defined in the report sub-
16 mitted by the Auditable Working Group of the Na-
17 tional Institute of Standards and Technology sub-
18 mitted to the Commission on January 4, 2011) and
19 meet the requirements for such auditability specified
20 in such report.

21 “(d) CONDITION.—As a condition on receiving a pay-
22 ment under this section, a State shall provide funds, in-
23 kind contributions, or a combination of both, from sources
24 other than funds provided through such payment in an

1 amount that is at least equal to one-third of the amount
2 of such payment.

3 “(e) AMOUNT OF PAYMENT.—The Commission shall
4 determine the amount of payment made to a State under
5 the program under this section based on—

6 “(1) the number of outdated voting machines
7 used by a qualifying precinct; and

8 “(2) the number of the qualifying precincts
9 within the State.

10 “(f) ENFORCEMENT.—A State receiving a payment
11 under the program under this section shall ensure that
12 all of the outdated voting machines in the qualifying pre-
13 cincts within that State have been replaced in time for
14 the regularly scheduled general election for Federal office
15 to be held in November 2018.

16 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated to carry out this section
18 \$125,000,000 for the period of fiscal years 2017 and
19 2018.

20 “(h) OUTDATED VOTING MACHINE DEFINED.—The
21 term ‘outdated voting machine’ means an electronic voting
22 machine that, as of November 6, 2012, has been in use
23 to administer an election on or before November 4,
24 2008;”.

1 (b) CONFORMING TABLE OF CONTENTS AMEND-
 2 MENT.—The table of contents of the Help America Vote
 3 Act of 2002 (52 U.S.C. 20901 note) is amended by insert-
 4 ing after the item related to section 296 (relating to the
 5 authorization of appropriations for the National Student
 6 and Parent Mock Election) the following:

“PART 7. GRANTS FOR EDUCATION AND TRAINING OF ELECTION OFFICIALS
 “Sec. 297. Replacement of outdated voting machines.”.

7 **SEC. 3. ELECTION OFFICIAL TRAINING.**

8 (a) IN GENERAL.—Subtitle D of title II of the Help
 9 America Vote Act (52 U.S.C. 21001 et seq.), as amended
 10 by section 2, is further amended by adding at the end the
 11 following:

12 **“PART 8—GRANTS FOR EDUCATION AND**
 13 **TRAINING OF ELECTION OFFICIALS**
 14 **“SEC. 298. GRANTS FOR EDUCATION AND TRAINING OF**
 15 **ELECTION OFFICIALS.**

16 “(a) IN GENERAL.—The Commission shall make
 17 grants to States to provide for the education and training,
 18 through the use of webinars or other appropriate means,
 19 of election officials and poll workers on voting machine
 20 maintenance, pre- and post-election voting machine test-
 21 ing, the development of contingency plans, and such other
 22 topics as may be necessary for purposes of streamlining
 23 the voting process.

24 “(b) GRANT.—

1 “(1) CERTIFICATION.—A State seeking a grant
2 under this section shall submit to the Commission a
3 certification in such form and manner as the Com-
4 mission may specify with respect to the State’s ex-
5 penditures in providing for the education and train-
6 ing described in subsection (a).

7 “(2) AMOUNT.—The amount of a grant made
8 to a State shall be determined by the Commission
9 based on the Commission’s determination of the
10 State’s reasonable costs incurred in providing the
11 education and training described in subsection (a).

12 “(3) TRANSMISSION OF GRANT/PAYMENT.—Not
13 later than 30 days after the date on which the Com-
14 mission receives the certification specified in para-
15 graph (1), the Commission shall make a payment to
16 the State in an amount equal to the amount of the
17 grant determined for such State under paragraph
18 (2).

19 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated to carry out this section
21 \$50,000,000 for the period of fiscal years 2017 through
22 2018.

23 “(d) STATE DEFINED.—In this section, the term
24 ‘State’ means each State of the United States, the District

1 of Columbia, and each commonwealth and territory or pos-
 2 session of the United States.”.

3 (b) CONFORMING TABLE OF CONTENTS AMEND-
 4 MENT.—The table of contents of the Help America Vote
 5 Act of 2002 (52 U.S.C. 20901 note), as amended by sec-
 6 tion 2, is further amended by inserting after the item re-
 7 lated to section 297 (relating to the replacement of out-
 8 dated voting machines) the following:

“PART 8. GRANTS FOR EDUCATION AND TRAINING OF ELECTION OFFICIALS
 “Sec. 298. Grants for education and training of election officials.”.

9 **SEC. 4. GRANTS FOR RESEARCH ON VOTING TECHNOLOGY**
 10 **IMPROVEMENTS.**

11 (a) IN GENERAL.—Part 4 of subtitle D of title II
 12 of the Help America Vote Act of 2002 (52 U.S.C. 21051
 13 et seq.) is amended by adding at the end the following
 14 new sections:

15 **“SEC. 284. GRANTS FOR TESTING OPEN SOURCE SOFT-**
 16 **WARE.**

17 “(a) IN GENERAL.—The Commission shall make
 18 grants to States or any political subdivision thereof to con-
 19 duct pilot testing with respect to, and carry out the imple-
 20 mentation of, voting systems that use—

- 21 “(1) non-proprietary open source software; and
 22 “(2) commercial or custom firmware and hard-
 23 ware.

1 “(b) CONDITION.—As a condition on receiving a
 2 grant under this section, a State (or a political subdivision
 3 thereof) shall submit to the Commission an exact copy of
 4 the source code for—

5 “(1) each component of the voting system that
 6 is the subject of the grant, including complete build
 7 and configuration instructions and related docu-
 8 ments for compiling the source code into object code;
 9 and

10 “(2) any interactive enhancements made to
 11 such system within 30 days of such enhancements
 12 being made.

13 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
 14 are authorized to be appropriated to carry out this section
 15 \$20,000,000 for the period of fiscal years 2017 through
 16 2018.

17 “(d) OPEN SOURCE SOFTWARE DEFINED.—The
 18 term ‘open source software’ means software the license of
 19 which is made available under an open source license.

20 **“SEC. 285. GRANTS FOR A COMMON DATA FORMAT ALLOW-**
 21 **ING FOR VOTING-EQUIPMENT DEVICE INTER-**
 22 **OPERABILITY.**

23 “(a) IN GENERAL.—The National Institute of Stand-
 24 ards and Technology shall develop, or make grants to one

1 or more eligible entities to develop, a common data format
 2 allowing for voting-equipment device interoperability.

3 “(b) AUTHORIZATION OF APPROPRIATIONS.—There
 4 are authorized to be appropriated to carry out this section
 5 \$5,000,000 for the period of fiscal years 2017 through
 6 2018.”.

7 (b) CONFORMING TABLE OF CONTENTS AMEND-
 8 MENT.—The table of contents of the Help America Vote
 9 Act of 2002 (52 U.S.C. 20901 note), as amended by sec-
 10 tion 2, is further amended by inserting after the item re-
 11 lated to section 283 (relating to the authorization of ap-
 12 propriations for the pilot program for testing of equipment
 13 and technology) the following:

“284. Grants for testing open source software.

“285. Grants for a common data format allowing for voting-equipment device
 interoperability.”.

14 **SEC. 5. DEPOSIT OF ELECTION-DEDICATED VOTING SYS-**
 15 **TEM TECHNOLOGY IN NATIONAL SOFTWARE**
 16 **REFERENCE LIBRARY.**

17 (a) DEPOSIT REQUIRED; CONDITIONS FOR DISCLO-
 18 SURE.—Section 301(a) of the Help America Vote Act of
 19 2002 (42 U.S.C. 15481(a)) is amended by adding at the
 20 end the following new paragraph:

21 “(7) PROHIBITING USE OF ELECTION-DEDI-
 22 CATED VOTING SYSTEM TECHNOLOGIES NOT DEPOS-
 23 ITED WITH NATIONAL SOFTWARE REFERENCE LI-
 24 BRARY; DISCLOSURE REQUIREMENTS.—

1 “(A) PROHIBITION.—

2 “(i) IN GENERAL.—A voting system
3 used in an election for Federal office in a
4 State may not at any time during the elec-
5 tion contain or use any election-dedicated
6 voting system technology which is not de-
7 posited by the State (or, at the option of
8 the State, by the vendor of the technology)
9 with the National Software Reference Li-
10 brary of the National Institute of Stand-
11 ards and Technology prior to the date of
12 the election, to be held in escrow and sub-
13 ject to disclosure in accordance with sub-
14 paragraph (B).

15 “(ii) EXTENSION OF DEADLINE FOR
16 DEPOSIT.—If the chief State election offi-
17 cial certifies to the Director of the Na-
18 tional Institute of Standards and Tech-
19 nology prior to the date of the election
20 that, because of a revision to the election-
21 dedicated voting system technology which
22 is made less than 30 days prior to the date
23 of the election, the State or vendor is un-
24 able to deposit the technology in accord-
25 ance with clause (i) prior to the date of the

1 election, the voting system used in the elec-
2 tion may contain or use the technology if—

3 “(I) the chief State election offi-
4 cial approves the use of the technology
5 for the election; and

6 “(II) the State or vendor deposits
7 the technology in accordance with
8 clause (i) not later than 1 week after
9 the date of the election.

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

22 “(B) REQUIREMENT FOR DISCLOSURE AND
23 LIMITATION ON RESTRICTING DISCLOSURE.—
24 With respect to any election-dedicated voting
25 system technology which is deposited under

1 subparagraph (A), the Director of the National
2 Institute of Standards and Technology shall—

3 “(i) hold the technology in escrow;
4 and

5 “(ii) disclose technology and informa-
6 tion regarding the technology to another
7 person if—

8 “(I) the person is a qualified per-
9 son described in subparagraph (C)
10 who has entered into a nondisclosure
11 agreement with respect to the tech-
12 nology which meets the requirements
13 of subparagraph (D); or

14 “(II) the Director is permitted or
15 required to disclose the technology to
16 the person under the law of the appli-
17 cable State, in accordance with the
18 terms and conditions applicable under
19 such law.

20 “(C) QUALIFIED PERSONS DESCRIBED.—

21 With respect to the disclosure of election-dedi-
22 cated voting system technology under subpara-
23 graph (B)(ii)(I), a ‘qualified person’ is any of
24 the following:

1 “(i) A governmental entity with re-
2 sponsibility for the administration of vot-
3 ing and election-related matters in elec-
4 tions for Federal office, for purposes of re-
5 viewing, analyzing, or reporting on the
6 technology.

7 “(ii) If permitted under a court order,
8 a party to post-election litigation chal-
9 lenging the result of an election or the ad-
10 ministration or use of the technology used
11 in an election, but only to the extent per-
12 mitted under the terms and conditions of
13 such court order.

14 “(iii) A person who reviews, analyzes,
15 or reports on the technology solely for an
16 investigation or inquiry concerning the ac-
17 curacy or integrity of the technology pur-
18 suant to clause (i) or (ii).

19 “(D) REQUIREMENTS FOR NONDISCLO-
20 SURE AGREEMENTS.—A nondisclosure agree-
21 ment entered into with respect to an election-
22 dedicated voting system technology meets the
23 requirements of this subparagraph if the agree-
24 ment—

1 “(i) is limited in scope to coverage of
2 the technology disclosed under subpara-
3 graph (B) and any trade secrets and intel-
4 lectual property rights related thereto;

5 “(ii) does not prohibit a signatory
6 from entering into other nondisclosure
7 agreements to review other technologies
8 under this paragraph;

9 “(iii) exempts from coverage both in-
10 formation the signatory lawfully obtained
11 from another source and information in
12 the public domain;

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

16 “(v) prohibits the request or use of in-
17 junctions that bar a signatory from car-
18 rying out any activity authorized under
19 subparagraph (C), including injunctions
20 limited to the period prior to a judicial
21 proceeding involving the technology;

22 “(vi) is silent as to damages awarded
23 for breach of the agreement, other than a
24 reference to damages available under appli-
25 cable law;

1 “(vii) allows disclosure of evidence re-
2 lating to possible criminal conduct or other
3 violations of law, including in response to
4 a subpoena or warrant;

5 “(viii) allows disclosures and testi-
6 mony to legislative branch authorities, ju-
7 dicial proceedings, and executive branch in-
8 vestigations in response to a subpoena or
9 warrant or as otherwise provided by law;
10 and

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

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

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

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

23 “(II) A complete disk image of
24 the pre-build, build environment, and

1 any file signatures to validate that it
2 is unmodified.

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

7 “(IV) All executable code pro-
8 duced by the trusted build and any
9 file signatures to validate that it is
10 unmodified.

11 “(V) Installation devices and
12 software file signatures.

13 “(ii) EXCLUSION.—Such term does
14 not include ‘commercial-off-the-shelf’ soft-
15 ware and hardware defined under the vol-
16 untary voting system guidelines adopted by
17 the Commission under section 222 which
18 are in effect as of the date of the election
19 involved.

20 “(F) TRUSTED BUILD DEFINED.—For
21 purposes of this paragraph, the term ‘trusted
22 build’ means a witnessed software build in
23 which source code is converted to machine-read-
24 able binary instructions (executable code) in a
25 manner providing security measures that help

1 ensure that the executable code is a verifiable
2 and faithful representation of the source code.”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply with respect to elections occurring
5 during 2016 or any succeeding year.

6 (c) AUTHORIZATION OF APPROPRIATIONS FOR NA-
7 TIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—
8 There are authorized to be appropriated to the National
9 Institute of Standards and Technology for each fiscal year
10 such sums as may be necessary to enable the Institute,
11 including the National Software Reference Library of the
12 Institute, to carry out paragraph (7) of section 301(a) of
13 the Help America Vote Act of 2002, as added by section
14 2(a).

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