

115TH CONGRESS  
2D SESSION

# H. R. 5147

To amend the Help America Vote Act of 2002 to require voting systems used in elections for Federal office to produce a voter-verified paper ballot of each vote cast on the system, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2018

Ms. GABBARD introduced the following bill; which was referred to the Committee on House Administration, and in addition to the Committee on the Budget, 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

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## A BILL

To amend the Help America Vote Act of 2002 to require voting systems used in elections for Federal office to produce a voter-verified paper ballot of each vote cast on the system, 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; SENSE OF CONGRESS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Securing America’s Elections Act of 2018”.

6 (b) SENSE OF CONGRESS.—It is the sense of Con-  
7 gress that according to the Department of Homeland Se-

1 curity there were attempts to hack the election infrastruc-  
 2 ture of 21 States during the 2016 elections. The failing  
 3 security and vulnerabilities in our national election infra-  
 4 structure were later confirmed and highlighted by the  
 5 hacking community in a report issued in September 2017,  
 6 after the DEFCON 25 conference in Las Vegas, Nevada.  
 7 In light of these findings, the Government must act with  
 8 all deliberate purpose to ensure that the integrity of elec-  
 9 tions in the United States is protected against hackers.

10 **SEC. 2. PROMOTING ACCURACY, INTEGRITY, AND SECU-**  
 11 **RITY THROUGH VOTER-VERIFIED PERMA-**  
 12 **NENT PAPER BALLOT.**

13 (a) BALLOT VERIFICATION AND AUDIT CAPACITY.—

14 (1) IN GENERAL.—Section 301(a)(2) of the  
 15 Help America Vote Act of 2002 (52 U.S.C.  
 16 21081(a)(2)) is amended to read as follows:

17 “(2) BALLOT VERIFICATION AND AUDIT CAPAC-  
 18 ITY.—

19 “(A) VOTER-VERIFIED PAPER BALLOTS.—

20 “(i) VERIFICATION.—(I) The voting  
 21 system shall require the production of a  
 22 voter-verified paper ballot of the voter’s  
 23 vote that shall be created by or made avail-  
 24 able for inspection and verification by the  
 25 individual voter before the voter’s vote is

1 cast and counted. For purposes of this  
2 subclause, a voter-verified paper ballot in-  
3 cludes (but is not limited to) a paper ballot  
4 marked by the voter for the purpose of  
5 being counted by hand or read by an opti-  
6 cal scanner or other similar device, a paper  
7 ballot prepared by the voter to be mailed  
8 to an election official (whether from a do-  
9 mestic or overseas location), a paper ballot  
10 created through the use of a ballot mark-  
11 ing device or system, or a paper ballot pro-  
12 duced by a touch screen or other electronic  
13 voting machine, so long as in each case the  
14 voter is permitted to verify the ballot in a  
15 paper form in accordance with this sub-  
16 paragraph.

17 “(II) The voting system shall provide  
18 the voter with an opportunity to correct  
19 any error made by the system in the voter-  
20 verified paper ballot before the permanent  
21 voter-verified paper ballot is preserved in  
22 accordance with clause (ii).

23 “(III) The voting system shall not  
24 preserve the voter-verified paper ballots in  
25 any manner that makes it possible, at any

1 time after the ballot has been cast, to asso-  
2 ciate a voter with the record of the voter's  
3 vote.

4 “(ii) PRESERVATION.—The voter-  
5 verified paper ballot produced in accord-  
6 ance with clause (i) shall be used as the of-  
7 ficial ballot for purposes of any recount or  
8 audit conducted with respect to any elec-  
9 tion for Federal office in which the voting  
10 system is used, and shall be preserved in  
11 accordance with regulations promulgated  
12 by the Commission to establish criteria for  
13 the proper preservation and retention of  
14 the official ballots in the election.

15 “(iii) MANUAL AUDIT CAPACITY.—  
16 Each paper ballot produced pursuant to  
17 clause (i) shall be suitable for a manual  
18 audit equivalent to that of a paper ballot  
19 voting system, in accordance with the  
20 methods described in subparagraph (B).

21 “(B) APPROVED METHODS FOR MANUAL  
22 AUDITS.—The methods described in this sub-  
23 paragraph with respect to the manual audit of  
24 voter-verified paper ballots are—

1 “(i) audits conducted through the use  
2 of programmable electronic counting ma-  
3 chines which are not capable of being con-  
4 nected to the Internet, as determined in  
5 accordance with regulations promulgated  
6 by the Commission; or

7 “(ii) if no machine described in clause  
8 (i) is available, an audit conducted by a  
9 hand count.

10 “(C) RESOLUTION OF DISPUTES WHEN  
11 PAPER BALLOTS HAVE BEEN SHOWN TO BE  
12 COMPROMISED.—In the event that the paper  
13 ballots produced pursuant to subparagraph (A)  
14 with respect to an election for Federal office  
15 have been compromised, the State shall resolve  
16 the dispute over the results of the election in  
17 accordance with dispute resolution processes es-  
18 tablished under regulations promulgated by the  
19 Commission.

20 “(D) DEADLINE FOR PROMULGATION OF  
21 REGULATIONS.—The Commission shall promul-  
22 gate the regulations described in this paragraph  
23 not later than June 30, 2018.”.

24 (2) CONFORMING AMENDMENT CLARIFYING AP-  
25 PPLICABILITY OF ALTERNATIVE LANGUAGE ACCESSI-

1 BILITY.—Section 301(a)(4) of such Act (52 U.S.C.  
2 21081(a)(4)) is amended by inserting “(including  
3 the paper ballots required to be produced under  
4 paragraph (2))” after “voting system”.

5 (3) OTHER CONFORMING AMENDMENTS.—Sec-  
6 tion 301(a)(1) of such Act (52 U.S.C. 21081(a)(1))  
7 is amended—

8 (A) in subparagraph (A)(i), by striking  
9 “counted” and inserting “counted, in accord-  
10 ance with paragraphs (2) and (3)”;

11 (B) in subparagraph (A)(ii), by striking  
12 “counted” and inserting “counted, in accord-  
13 ance with paragraphs (2) and (3)”;

14 (C) in subparagraph (A)(iii), by striking  
15 “counted” each place it appears and inserting  
16 “counted, in accordance with paragraphs (2)  
17 and (3)”;

18 (D) in subparagraph (B)(ii), by striking  
19 “counted” and inserting “counted, in accord-  
20 ance with paragraphs (2) and (3)”.

21 (b) AVAILABILITY OF ADDITIONAL FUNDING TO EN-  
22 ABLE STATES TO MEET COSTS OF REVISED REQUIRE-  
23 MENT.—

24 (1) EXTENSION OF REQUIREMENTS PAYMENTS  
25 FOR MEETING REVISED REQUIREMENT; AMOUNTS

1 DEEMED TO MEET REQUIREMENTS FOR EMERGENCY  
2 FUNDING.—Section 257(a) of such Act (52 U.S.C.  
3 21007(a)) is amended by adding at the end the fol-  
4 lowing new paragraph:

5 “(5) For fiscal year 2018, such sums as may be  
6 necessary to enable States to meet the requirements  
7 of section 301(a)(2) which are first imposed on the  
8 State pursuant to the amendments made by section  
9 2(a) of the Securing America’s Elections Act of  
10 2018. Any amount appropriated pursuant to the au-  
11 thorization under this paragraph shall be designated  
12 by the Congress as being for an emergency require-  
13 ment pursuant to section 251(b)(2)(A)(i) of the Bal-  
14 anced Budget and Emergency Deficit Control Act of  
15 1985.”.

16 (2) AMOUNT OF PAYMENT BASED ON COSTS IN-  
17 CURRED IN MEETING REVISED REQUIREMENTS.—  
18 Section 252 of such Act (52 U.S.C. 21002) is  
19 amended—

20 (A) in subsection (a), by striking “sub-  
21 section (c)” and inserting “subsections (c) and  
22 (e)”;

23 (B) by redesignating subsection (e) as sub-  
24 section (f); and

1 (C) by inserting after subsection (d) the  
2 following new subsection:

3 “(e) SPECIAL RULE FOR FISCAL YEAR 2018.—

4 “(1) COVERAGE OF COSTS OF MEETING RE-  
5 VISED BALLOT VERIFICATION AND AUDIT CAPACITY  
6 REQUIREMENTS.—The amount of a requirements  
7 payment made to a State from funds appropriated  
8 for fiscal year 2018 shall be equal to the State’s es-  
9 timate of the reasonable costs the State expects to  
10 incur to meet the requirements referred to in para-  
11 graph (3), as contained in the statement filed by the  
12 State with the Commission under section  
13 253(f)(1)(A)(ii).

14 “(2) RECOUPMENT OF OVERPAYMENTS.—If a  
15 State receives a requirements payment from funds  
16 appropriated for fiscal year 2018, the State shall  
17 agree to repay to the Commission the excess (if any)  
18 of—

19 “(A) the amount of the payment; over

20 “(B) the actual costs incurred by the State  
21 in meeting the requirements referred to in para-  
22 graph (3), as contained in the statement filed  
23 by the State with the Commission under section  
24 253(f)(1)(B).



1           “(3) REQUIREMENTS DESCRIBED.—The re-  
2           quirements referred to in this paragraph are the re-  
3           quirements of section 301(a)(2) (relating to ballot  
4           verification and audit capacity) which are first im-  
5           posed on the State pursuant to the amendments  
6           made by section 2(a) of the Securing America’s  
7           Elections Act of 2018.”.

8           (3) REVISED CONDITIONS FOR RECEIPT OF  
9           FUNDS.—Section 253 of such Act (52 U.S.C.  
10          21003) is amended—

11                   (A) in subsection (a), by striking “A State  
12                   is eligible” and inserting “Except as provided in  
13                   subsection (f), a State is eligible”; and

14                   (B) by adding at the end the following new  
15                   subsection:

16          “(f) SPECIAL RULE FOR FISCAL YEAR 2018.—

17                   “(1) IN GENERAL.—Notwithstanding any other  
18                   provision of this part, a State is eligible to receive  
19                   a requirements payment from funds appropriated for  
20                   fiscal year 2018 if, at any time after the funds are  
21                   appropriated, the chief executive officer of the State,  
22                   or designee, in consultation and coordination with  
23                   the chief State election official—

24                           “(A) files a statement with the Commis-  
25                           sion—

1 “(i) describing how the State will use  
2 the payment to meet the requirements of  
3 section 301(a)(2) (relating to ballot  
4 verification and audit capacity) which are  
5 first imposed on the State pursuant to the  
6 amendment made by section 2(a) of the  
7 Securing America’s Elections Act of 2018,  
8 and

9 “(ii) containing the State’s estimate  
10 of the reasonable costs the State expects to  
11 incur to meet such requirements; and

12 “(B) certifies to the Commission that,  
13 upon completing the replacement or upgrading  
14 of its voting systems to meet such require-  
15 ments, the State will file a statement with the  
16 Commission containing the actual costs in-  
17 curred by the State in meeting such require-  
18 ments.

19 “(2) CERTIFICATIONS BY STATES THAT RE-  
20 QUIRE CHANGES TO STATE LAW.—In the case of a  
21 State that requires State legislation to carry out any  
22 activity covered by any certification submitted under  
23 this subsection, the State shall be permitted to make  
24 the certification notwithstanding that the legislation  
25 has not been enacted at the time the certification is

1 submitted and such State shall submit an additional  
2 certification once such legislation is enacted.”.

3 (4) PERMITTING USE OF FUNDS FOR REIM-  
4 BURSEMENT FOR COSTS PREVIOUSLY INCURRED.—

5 Section 251(c)(1) of such Act (52 U.S.C.  
6 21001(c)(1)) is amended by striking the period at  
7 the end and inserting the following: “, or as a reim-  
8 bursement for any costs incurred in meeting the re-  
9 quirements of section 301(a)(2) which are first im-  
10 posed pursuant to the amendments made by section  
11 2(a) of the Securing America’s Elections Act of  
12 2018 or in otherwise replacing or upgrading voting  
13 systems in response to such amendments.”.

14 (5) RULE OF CONSTRUCTION REGARDING USE  
15 OF FUNDS TO REPLACE OR UPGRADE SYSTEMS OB-  
16 TAINED WITH FUNDS PROVIDED PREVIOUSLY UNDER  
17 HELP AMERICA VOTE ACT OF 2002.—Nothing in the  
18 amendments made by this subsection or in any other  
19 provision of the Help America Vote Act of 2002 may  
20 be construed to prohibit a State from using any  
21 funds provided under such Act pursuant to the  
22 amendments made by this subsection (or any funds  
23 provided under such Act prior to the date of the en-  
24 actment of this Act which remain unexpended as of  
25 the date of the enactment of this Act) to replace or

1 upgrade a voting system purchased or otherwise ob-  
2 tained in whole or in part using funds received  
3 under title I or II of the Help America Vote Act at  
4 any time before the date of the enactment of this  
5 Act.

6 (6) EFFECTIVE DATE.—The amendments made  
7 by this subsection shall apply with respect to fiscal  
8 years beginning with fiscal year 2018.

9 (c) STUDY AND REPORT ON USE OF OPEN-SOURCE  
10 SOFTWARE IN VOTING SYSTEMS.—

11 (1) STUDY.—The Secretary of Homeland Secu-  
12 rity and the Election Assistance Commission, acting  
13 jointly, shall conduct a study of the feasibility and  
14 desirability of using open-source software in voting  
15 systems, based on information obtained from elec-  
16 tions for Federal office held in 2018 through 2020.

17 (2) REPORT.—Not later than July 1, 2021, the  
18 Secretary and the Commission shall submit to Con-  
19 gress a report on the study conducted under para-  
20 graph (1), and shall include in the report such rec-  
21 ommendations as the Secretary and Commission  
22 consider appropriate regarding the possible use of  
23 open-source software in the voting systems used to  
24 administer elections for Federal office held in 2022.

1           (3) DEVELOPMENT AND MAINTENANCE OF  
2       SOFTWARE.—If the Secretary and the Commission  
3       include in the report submitted under paragraph (2)  
4       a recommendation that State election officials use  
5       open-source software in the voting systems used to  
6       administer elections for Federal office in the State—

7           (A) the Commission shall enter into a part-  
8       nership with appropriate private entities, in-  
9       cluding entities engaged in the business of  
10      maintaining open-source software, to develop,  
11      test, certify, and maintain open-source software  
12      for such purpose for elections held in 2024 or  
13      any succeeding year; and

14          (B) the Commission shall ensure that such  
15      certified software is available without cost to  
16      State election officials.

17      (d) EFFECTIVE DATE FOR NEW REQUIREMENTS.—  
18      Section 301(d) of such Act (52 U.S.C. 21081(d)) is  
19      amended to read as follows:

20      “(d) EFFECTIVE DATE.—

21          “(1) IN GENERAL.—Except as provided in para-  
22      graph (2), each State and jurisdiction shall be re-  
23      quired to comply with the requirements of this sec-  
24      tion on and after January 1, 2006.

1           “(2) SPECIAL RULE FOR CERTAIN REQUIRE-  
2           MENTS.—The requirements of subsection (a)(2)  
3           which are first imposed on a State and jurisdiction  
4           pursuant to the amendments made by section 2(a)  
5           of the Securing America’s Elections Act of 2018  
6           shall apply with respect to the regularly scheduled  
7           general election for Federal office held in November  
8           2018 and each succeeding election for Federal of-  
9           fice.”.

○