

116TH CONGRESS
1ST SESSION

H. R. 1946

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.

IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 2019

Ms. GABBARD (for herself and Ms. NORTON) 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

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 2019”.

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 A subsequent report issued in September 2018, after the
 8 DEFCON 26 Conference, highlighted the need for Federal
 9 funding to States to improve the security of election infra-
 10 structure. In light of these findings, the Government must
 11 act with all deliberate purpose to ensure that the integrity
 12 of elections in the United States is protected against hack-
 13 ers.

14 **SEC. 2. PROMOTING ACCURACY, INTEGRITY, AND SECU-**
 15 **RITY THROUGH VOTER-VERIFIED PERMA-**
 16 **NENT PAPER BALLOT.**

17 (a) **BALLOT VERIFICATION AND AUDIT CAPACITY.—**

18 (1) **IN GENERAL.**—Section 301(a)(2) of the
 19 Help America Vote Act of 2002 (52 U.S.C.
 20 21081(a)(2)) is amended to read as follows:

21 “(2) **BALLOT VERIFICATION AND AUDIT CAPAC-**
 22 **ITY.—**

23 “(A) **VOTER-VERIFIED PAPER BALLOTS.—**

24 “(i) **VERIFICATION.**—(I) The voting
 25 system shall require the production of a

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

21 “(II) The voting system shall provide
22 the voter with an opportunity to correct
23 any error made by the system in the voter-
24 verified paper ballot before the permanent

1 voter-verified paper ballot is preserved in
2 accordance with clause (ii).

3 “(III) The voting system shall not
4 preserve the voter-verified paper ballots in
5 any manner that makes it possible, at any
6 time after the ballot has been cast, to asso-
7 ciate a voter with the record of the voter’s
8 vote.

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

20 “(iii) MANUAL AUDIT CAPACITY.—
21 Each paper ballot produced pursuant to
22 clause (i) shall be suitable for a manual
23 audit equivalent to that of a paper ballot
24 voting system, in accordance with the
25 methods described in subparagraph (B).

1 “(B) APPROVED METHODS FOR MANUAL
2 AUDITS.—The methods described in this sub-
3 paragraph with respect to the manual audit of
4 voter-verified paper ballots are—

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

11 “(ii) if no machine described in clause
12 (i) is available, an audit conducted by a
13 hand count.

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

24 “(D) DEADLINE FOR PROMULGATION OF
25 REGULATIONS.—The Commission shall promul-

1 gate the regulations described in this paragraph
2 not later than June 30, 2019.”.

3 (2) CONFORMING AMENDMENT CLARIFYING AP-
4 PLICABILITY OF ALTERNATIVE LANGUAGE ACCESSI-
5 BILITY.—Section 301(a)(4) of such Act (52 U.S.C.
6 21081(a)(4)) is amended by inserting “(including
7 the paper ballots required to be produced under
8 paragraph (2))” after “voting system”.

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

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

15 (B) in subparagraph (A)(ii), by striking
16 “counted” and inserting “counted, in accord-
17 ance with paragraphs (2) and (3)”;

18 (C) in subparagraph (A)(iii), by striking
19 “counted” each place it appears and inserting
20 “counted, in accordance with paragraphs (2)
21 and (3)”;

22 (D) in subparagraph (B)(ii), by striking
23 “counted” and inserting “counted, in accord-
24 ance with paragraphs (2) and (3)”.

1 (b) AVAILABILITY OF ADDITIONAL FUNDING TO EN-
2 ABLE STATES TO MEET COSTS OF REVISED REQUIRE-
3 MENT.—

4 (1) EXTENSION OF REQUIREMENTS PAYMENTS
5 FOR MEETING REVISED REQUIREMENT; AMOUNTS
6 DEEMED TO MEET REQUIREMENTS FOR EMERGENCY
7 FUNDING.—Section 257(a) of such Act (52 U.S.C.
8 21007(a)) is amended by adding at the end the fol-
9 lowing new paragraph:

10 “(5) For fiscal year 2019, such sums as may be
11 necessary to enable States to meet the requirements
12 of section 301(a)(2) which are first imposed on the
13 State pursuant to the amendments made by section
14 2(a) of the Securing America’s Elections Act of
15 2019. Any amount appropriated pursuant to the au-
16 thorization under this paragraph shall be designated
17 by the Congress as being for an emergency require-
18 ment pursuant to section 251(b)(2)(A)(i) of the Bal-
19 anced Budget and Emergency Deficit Control Act of
20 1985.”.

21 (2) AMOUNT OF PAYMENT BASED ON COSTS IN-
22 CURRED IN MEETING REVISED REQUIREMENTS.—
23 Section 252 of such Act (52 U.S.C. 21002) is
24 amended—

1 (A) in subsection (a), by striking “sub-
 2 section (c)” and inserting “subsections (c) and
 3 (e)”;

4 (B) by redesignating subsection (e) as sub-
 5 section (f); and

6 (C) by inserting after subsection (d) the
 7 following new subsection:

8 “(e) SPECIAL RULE FOR FISCAL YEAR 2019.—

9 “(1) COVERAGE OF COSTS OF MEETING RE-
 10 VISED BALLOT VERIFICATION AND AUDIT CAPACITY
 11 REQUIREMENTS.—The amount of a requirements
 12 payment made to a State from funds appropriated
 13 for fiscal year 2019 shall be equal to the State’s es-
 14 timate of the reasonable costs the State expects to
 15 incur to meet the requirements referred to in para-
 16 graph (3), as contained in the statement filed by the
 17 State with the Commission under section
 18 253(f)(1)(A)(ii).

19 “(2) RECOUPMENT OF OVERPAYMENTS.—If a
 20 State receives a requirements payment from funds
 21 appropriated for fiscal year 2018, the State shall
 22 agree to repay to the Commission the excess (if any)
 23 of—

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

1 “(B) the actual costs incurred by the State
 2 in meeting the requirements referred to in para-
 3 graph (3), as contained in the statement filed
 4 by the State with the Commission under section
 5 253(f)(1)(B).

6 “(3) REQUIREMENTS DESCRIBED.—The re-
 7 quirements referred to in this paragraph are the re-
 8 quirements of section 301(a)(2) (relating to ballot
 9 verification and audit capacity) which are first im-
 10 posed on the State pursuant to the amendments
 11 made by section 2(a) of the Securing America’s
 12 Elections Act of 2019.”.

13 (3) REVISED CONDITIONS FOR RECEIPT OF
 14 FUNDS.—Section 253 of such Act (52 U.S.C.
 15 21003) is amended—

16 (A) in subsection (a), by striking “A State
 17 is eligible” and inserting “Except as provided in
 18 subsection (f), a State is eligible”; and

19 (B) by adding at the end the following new
 20 subsection:

21 “(f) SPECIAL RULE FOR FISCAL YEAR 2019.—

22 “(1) IN GENERAL.—Notwithstanding any other
 23 provision of this part, a State is eligible to receive
 24 a requirements payment from funds appropriated for
 25 fiscal year 2019 if, at any time after the funds are

1 appropriated, the chief executive officer of the State,
2 or designee, in consultation and coordination with
3 the chief State election official—

4 “(A) files a statement with the Commis-
5 sion—

6 “(i) describing how the State will use
7 the payment to meet the requirements of
8 section 301(a)(2) (relating to ballot
9 verification and audit capacity) which are
10 first imposed on the State pursuant to the
11 amendment made by section 2(a) of the
12 Securing America’s Elections Act of 2019,
13 and

14 “(ii) containing the State’s estimate
15 of the reasonable costs the State expects to
16 incur to meet such requirements; and

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

24 “(2) CERTIFICATIONS BY STATES THAT RE-
25 QUIRE CHANGES TO STATE LAW.—In the case of a

1 State that requires State legislation to carry out any
2 activity covered by any certification submitted under
3 this subsection, the State shall be permitted to make
4 the certification notwithstanding that the legislation
5 has not been enacted at the time the certification is
6 submitted and such State shall submit an additional
7 certification once such legislation is enacted.”.

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

10 Section 251(c)(1) of such Act (52 U.S.C.
11 21001(c)(1)) is amended by striking the period at
12 the end and inserting the following: “, or as a reim-
13 bursement for any costs incurred in meeting the re-
14 quirements of section 301(a)(2) which are first im-
15 posed pursuant to the amendments made by section
16 2(a) of the Securing America’s Elections Act of
17 2018 or in otherwise replacing or upgrading voting
18 systems in response to such amendments.”.

19 (5) RULE OF CONSTRUCTION REGARDING USE
20 OF FUNDS TO REPLACE OR UPGRADE SYSTEMS OB-
21 TAINED WITH FUNDS PROVIDED PREVIOUSLY UNDER
22 HELP AMERICA VOTE ACT OF 2002.—Nothing in the
23 amendments made by this subsection or in any other
24 provision of the Help America Vote Act of 2002 may
25 be construed to prohibit a State from using any

1 funds provided under such Act pursuant to the
2 amendments made by this subsection (or any funds
3 provided under such Act prior to the date of the en-
4 actment of this Act which remain unexpended as of
5 the date of the enactment of this Act) to replace or
6 upgrade a voting system purchased or otherwise ob-
7 tained in whole or in part using funds received
8 under title I or II of the Help America Vote Act at
9 any time before the date of the enactment of this
10 Act.

11 (6) EFFECTIVE DATE.—The amendments made
12 by this subsection shall apply with respect to fiscal
13 years beginning with fiscal year 2019.

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

16 (1) STUDY.—The Secretary of Homeland Secu-
17 rity and the Election Assistance Commission, acting
18 jointly, shall conduct a study of the feasibility and
19 desirability of using open-source software in voting
20 systems, based on information obtained from elec-
21 tions for Federal office held in 2020 through 2022.

22 (2) REPORT.—Not later than July 1, 2023, the
23 Secretary and the Commission shall submit to Con-
24 gress a report on the study conducted under para-
25 graph (1), and shall include in the report such rec-

ommendations as the Secretary and Commission consider appropriate regarding the possible use of open-source software in the voting systems used to administer elections for Federal office held in 2024.

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

(A) the Commission shall enter into a partnership with appropriate private entities, including entities engaged in the business of maintaining open-source software, to develop, test, certify, and maintain open-source software for such purpose for elections held in 2026 or any succeeding year; and

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

(d) EFFECTIVE DATE FOR NEW REQUIREMENTS.—

Section 301(d) of such Act (52 U.S.C. 21081(d)) is amended to read as follows:

“(d) EFFECTIVE DATE.—

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

5 “(2) SPECIAL RULE FOR CERTAIN REQUIRE-
6 MENTS.—The requirements of subsection (a)(2)
7 which are first imposed on a State and jurisdiction
8 pursuant to the amendments made by section 2(a)
9 of the Securing America’s Elections Act of 2019
10 shall apply with respect to the regularly scheduled
11 general election for Federal office held in November
12 2020 and each succeeding election for Federal of-
13 fice.”.

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