

117TH CONGRESS
1ST SESSION

H. R. 4384

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

JULY 9, 2021

Mr. GOSAR 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.**

4 This Act may be cited as the “Securing America’s
5 Elections Act of 2021”.

1 **SEC. 2. PROMOTING ACCURACY, INTEGRITY, AND SECUR-**
2 **ITY THROUGH VOTER-VERIFIED PERMA-**
3 **NENT PAPER BALLOT.**

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

5 (1) **IN GENERAL.**—Section 301(a)(2) of the
6 Help America Vote Act of 2002 (52 U.S.C.
7 21081(a)(2)) is amended to read as follows:

8 “(2) **BALLOT VERIFICATION AND AUDIT CAPAC-**
9 **ITY.—**

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

11 “(i) **VERIFICATION.**—(I) The voting
12 system shall require the production of a
13 voter-verified paper ballot of the voter’s
14 vote that shall be created by or made avail-
15 able for inspection and verification by the
16 individual voter before the voter’s vote is
17 cast and counted. For purposes of this
18 subclause, a voter-verified paper ballot in-
19 cludes (but is not limited to) a paper ballot
20 marked by the voter for the purpose of
21 being counted by hand or read by an opti-
22 cal scanner or other similar device, a paper
23 ballot prepared by the voter to be mailed
24 to an election official (whether from a do-
25 mestic or overseas location), a paper ballot
26 created through the use of a ballot mark-

1 ing device or system, or a paper ballot pro-
2 duced by a touch screen or other electronic
3 voting machine, so long as in each case the
4 voter is permitted to verify the ballot in a
5 paper form in accordance with this sub-
6 paragraph.

7 “(II) The voting system shall provide
8 the voter with an opportunity to correct
9 any error made by the system in the voter-
10 verified paper ballot before the permanent
11 voter-verified paper ballot is preserved in
12 accordance with clause (ii).

13 “(III) The voting system shall not
14 preserve the voter-verified paper ballots in
15 any manner that makes it possible, at any
16 time after the ballot has been cast, to asso-
17 ciate a voter with the record of the voter’s
18 vote.

19 “(ii) PRESERVATION.—The voter-
20 verified paper ballot produced in accord-
21 ance with clause (i) shall be used as the of-
22 ficial ballot for purposes of any recount or
23 audit conducted with respect to any elec-
24 tion for Federal office in which the voting
25 system is used, and shall be preserved in

1 accordance with regulations promulgated
2 by the Commission to establish criteria for
3 the proper preservation and retention of
4 the official ballots in the election.

5 “(iii) MANUAL AUDIT CAPACITY.—
6 Each paper ballot produced pursuant to
7 clause (i) shall be suitable for a manual
8 audit equivalent to that of a paper ballot
9 voting system, in accordance with the
10 methods described in subparagraph (B).

11 “(B) APPROVED METHODS FOR MANUAL
12 AUDITS.—The methods described in this sub-
13 paragraph with respect to the manual audit of
14 voter-verified paper ballots are—

15 “(i) audits conducted through the use
16 of programmable electronic counting ma-
17 chines which are not capable of being con-
18 nected to the Internet, as determined in
19 accordance with regulations promulgated
20 by the Commission; or

21 “(ii) if no machine described in clause
22 (i) is available, an audit conducted by a
23 hand count.

24 “(C) RESOLUTION OF DISPUTES WHEN
25 PAPER BALLOTS HAVE BEEN SHOWN TO BE

1 COMPROMISED.—In the event that the paper
2 ballots produced pursuant to subparagraph (A)
3 with respect to an election for Federal office
4 have been compromised, the State shall resolve
5 the dispute over the results of the election in
6 accordance with dispute resolution processes es-
7 tablished under regulations promulgated by the
8 Commission.

9 “(D) DEADLINE FOR PROMULGATION OF
10 REGULATIONS.—The Commission shall promul-
11 gate the regulations described in this paragraph
12 not later than 3 months after the date of the
13 enactment of the Securing America’s Elections
14 Act of 2021.”.

15 (2) CONFORMING AMENDMENT CLARIFYING AP-
16 PPLICABILITY OF ALTERNATIVE LANGUAGE ACCESSI-
17 BILITY.—Section 301(a)(4) of such Act (52 U.S.C.
18 21081(a)(4)) is amended by inserting “(including
19 the paper ballots required to be produced under
20 paragraph (2))” after “voting system”.

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

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

4 (B) in subparagraph (A)(ii), by striking
 5 “counted” and inserting “counted, in accord-
 6 ance with paragraphs (2) and (3)”;

7 (C) in subparagraph (A)(iii), by striking
 8 “counted” each place it appears and inserting
 9 “counted, in accordance with paragraphs (2)
 10 and (3)”;

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

14 (b) AVAILABILITY OF ADDITIONAL FUNDING TO EN-
 15 ABLE STATES TO MEET COSTS OF REVISED REQUIRE-
 16 MENT.—

17 (1) EXTENSION OF REQUIREMENTS PAYMENTS
 18 FOR MEETING REVISED REQUIREMENT; AMOUNTS
 19 DEEMED TO MEET REQUIREMENTS FOR EMERGENCY
 20 FUNDING.—Section 257(a) of such Act (52 U.S.C.
 21 21007(a)) is amended by adding at the end the fol-
 22 lowing new paragraph:

23 “(5) For fiscal year 2021 and fiscal year 2022,
 24 such sums as may be necessary to enable States to
 25 meet the requirements of section 301(a)(2) which

are first imposed on the State pursuant to the amendments made by section 2(a) of the Securing America’s Elections Act of 2021. Any amount appropriated pursuant to the authorization under this paragraph shall be designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.”.

(2) AMOUNT OF PAYMENT BASED ON COSTS INCURRED IN MEETING REVISED REQUIREMENTS.—Section 252 of such Act (52 U.S.C. 21002) is amended—

(A) in subsection (a), by striking “subsection (c)” and inserting “subsections (c) and (e)”;

(B) by redesignating subsection (e) as subsection (f); and

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

“(e) SPECIAL RULE FOR FISCAL YEAR 2021 AND FISCAL YEAR 2022.—

“(1) COVERAGE OF COSTS OF MEETING REVISED BALLOT VERIFICATION AND AUDIT CAPACITY REQUIREMENTS.—The amount of a requirements payment made to a State from funds appropriated

1 for fiscal year 2021 and fiscal year 2022 shall be
2 equal to the State’s estimate of the reasonable costs
3 the State expects to incur to meet the requirements
4 referred to in paragraph (3), as contained in the
5 statement filed by the State with the Commission
6 under section 253(f)(1)(A)(ii).

7 “(2) RECOUPMENT OF OVERPAYMENTS.—If a
8 State receives a requirements payment from funds
9 appropriated for fiscal year 2020, the State shall
10 agree to repay to the Commission the excess (if any)
11 of—

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

13 “(B) the actual costs incurred by the State
14 in meeting the requirements referred to in para-
15 graph (3), as contained in the statement filed
16 by the State with the Commission under section
17 253(f)(1)(B).

18 “(3) REQUIREMENTS DESCRIBED.—The re-
19 quirements referred to in this paragraph are the re-
20 quirements of section 301(a)(2) (relating to ballot
21 verification and audit capacity) which are first im-
22 posed on the State pursuant to the amendments
23 made by section 2(a) of the Securing America’s
24 Elections Act of 2021.”.

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

4 (A) in subsection (a), by striking “A State
5 is eligible” and inserting “Except as provided in
6 subsection (f), a State is eligible”; and

7 (B) by adding at the end the following new
8 subsection:

9 “(f) SPECIAL RULE FOR FISCAL YEAR 2021 AND
10 FISCAL YEAR 2022.—

11 “(1) IN GENERAL.—Notwithstanding any other
12 provision of this part, a State is eligible to receive
13 a requirements payment from funds appropriated for
14 fiscal year 2021 and fiscal year 2022 if, at any time
15 after the funds are appropriated, the chief executive
16 officer of the State, or designee, in consultation and
17 coordination with the chief State election official—

18 “(A) files a statement with the Commis-
19 sion—

20 “(i) describing how the State will use
21 the payment to meet the requirements of
22 section 301(a)(2) (relating to ballot
23 verification and audit capacity) which are
24 first imposed on the State pursuant to the
25 amendment made by section 2(a) of the

1 Securing America’s Elections Act of 2021,
2 and

3 “(ii) containing the State’s estimate
4 of the reasonable costs the State expects to
5 incur to meet such requirements; and

6 “(B) certifies to the Commission that,
7 upon completing the replacement or upgrading
8 of its voting systems to meet such require-
9 ments, the State will file a statement with the
10 Commission containing the actual costs in-
11 curred by the State in meeting such require-
12 ments.

13 “(2) CERTIFICATIONS BY STATES THAT RE-
14 QUIRE CHANGES TO STATE LAW.—In the case of a
15 State that requires State legislation to carry out any
16 activity covered by any certification submitted under
17 this subsection, the State shall be permitted to make
18 the certification notwithstanding that the legislation
19 has not been enacted at the time the certification is
20 submitted and such State shall submit an additional
21 certification once such legislation is enacted.”.

22 (4) PERMITTING USE OF FUNDS FOR REIM-
23 BURSEMENT FOR COSTS PREVIOUSLY INCURRED.—
24 Section 251(c)(1) of such Act (52 U.S.C.
25 21001(c)(1)) is amended by striking the period at

1 the end and inserting the following: “, or as a reim-
2 bursement for any costs incurred in meeting the re-
3 quirements of section 301(a)(2) which are first im-
4 posed pursuant to the amendments made by section
5 2(a) of the Securing America’s Elections Act of
6 2021 or in otherwise replacing or upgrading voting
7 systems in response to such amendments.”.

8 (5) RULE OF CONSTRUCTION REGARDING USE
9 OF FUNDS TO REPLACE OR UPGRADE SYSTEMS OB-
10 TAINED WITH FUNDS PROVIDED PREVIOUSLY UNDER
11 HELP AMERICA VOTE ACT OF 2002.—Nothing in the
12 amendments made by this subsection or in any other
13 provision of the Help America Vote Act of 2002 may
14 be construed to prohibit a State from using any
15 funds provided under such Act pursuant to the
16 amendments made by this subsection (or any funds
17 provided under such Act prior to the date of the en-
18 actment of this Act which remain unexpended as of
19 the date of the enactment of this Act) to replace or
20 upgrade a voting system purchased or otherwise ob-
21 tained in whole or in part using funds received
22 under title I or II of the Help America Vote Act at
23 any time before the date of the enactment of this
24 Act.

1 (6) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply with respect to fiscal
3 years beginning with fiscal year 2021.

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

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

12 (2) REPORT.—Not later than July 1, 2025, the
13 Secretary and the Commission shall submit to Con-
14 gress a report on the study conducted under para-
15 graph (1), and shall include in the report such rec-
16 ommendations as the Secretary and Commission
17 consider appropriate regarding the possible use of
18 open-source software in the voting systems used to
19 administer elections for Federal office held in 2024.

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

1 (A) the Commission shall enter into a part-
2 nership with appropriate private entities, in-
3 cluding entities engaged in the business of
4 maintaining open-source software, to develop,
5 test, certify, and maintain open-source software
6 for such purpose for elections held in 2028 or
7 any succeeding year; and

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

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

14 “(d) EFFECTIVE DATE.—

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

19 “(2) SPECIAL RULE FOR CERTAIN REQUIRE-
20 MENTS.—The requirements of subsection (a)(2)
21 which are first imposed on a State and jurisdiction
22 pursuant to the amendments made by section 2(a)
23 of the Securing America’s Elections Act of 2021
24 shall apply with respect to the regularly scheduled
25 general election for Federal office held in November

1 2022 and each succeeding election for Federal of-
2 fice.”.

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