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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Verifying Optimal Tools for Elections Act of 2016” or the “VOTE Act of 2016”.

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 PAYMENTS TO STATES TO REPLACE OUTDATED VOTING MACHINES.

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

“PART 7—OUTDATED VOTING MACHINES

“SEC. 297. REPLACEMENT OF OUTDATED VOTING MACHINES.

“(a) IN GENERAL.—Not later than 45 days after the date of the enactment of the Verifying Optimal Tools for Elections Act of 2016, the Election Assistance Commission (referred to in this section as the ‘Commission’) shall make a payment to each State eligible under subsection (b) in which a precinct within that State used at least one outdated voting machine to administer the regularly scheduled general election for Federal office held in November 2012 (in this section referred to as a ‘qualifying precinct’).

“(b) ELIGIBILITY.—A State is eligible to receive a payment under the program under this section if the State, not later than 6 months after the date of the enactment of the Verifying Optimal Tools for Elections Act of 2016, submits to the Commission a notice that contains such information as the Commission may require which are necessary for the administration of the program.
“(c) Use of Funds.—A State shall use the funds provided under a payment under this section (either directly or as reimbursement, including as reimbursement for costs incurred on or after July 30, 2016, under multiyear contracts) to replace outdated voting machines in qualifying precincts within that State with voting machines (by purchase, lease, or such other arrangement as may be appropriate) that—

“(1)(A) have never been used in any general election for Federal office and are not outdated voting machines; or

“(B) have been used only with respect to general elections for Federal office held after November 2012; and

“(2) are auditable (as defined in the report submitted by the Auditable Working Group of the National Institute of Standards and Technology submitted to the Commission on January 4, 2011) and meet the requirements for such auditability specified in such report.

“(d) Condition.—As a condition on receiving a payment under this section, a State shall provide funds, in-kind contributions, or a combination of both, from sources other than funds provided through such payment in an
amount that is at least equal to one-third of the amount of such payment.

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

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

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

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

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

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

•HR 5131 IH
(b) CONFORMING TABLE OF CONTENTS AMENDMENT.—The table of contents of the Help America Vote Act of 2002 (52 U.S.C. 20901 note) is amended by inserting after the item related to section 296 (relating to the authorization of appropriations for the National Student and Parent Mock Election) the following:

“PART 7. GRANTS FOR EDUCATION AND TRAINING OF ELECTION OFFICIALS

“Sec. 297. Replacement of outdated voting machines.”.

SEC. 3. ELECTION OFFICIAL TRAINING.

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

“PART 8—GRANTS FOR EDUCATION AND TRAINING OF ELECTION OFFICIALS

“SEC. 298. GRANTS FOR EDUCATION AND TRAINING OF ELECTION OFFICIALS.

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

“(b) GRANT.—
“(1) Certification.—A State seeking a grant under this section shall submit to the Commission a certification in such form and manner as the Commission may specify with respect to the State’s expenditures in providing for the education and training described in subsection (a).

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

“(3) Transmission of Grant/Payment.—Not later than 30 days after the date on which the Commission receives the certification specified in paragraph (1), the Commission shall make a payment to the State in an amount equal to the amount of the grant determined for such State under paragraph (2).

“(c) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section $50,000,000 for the period of fiscal years 2017 through 2018.

“(d) State Defined.—In this section, the term ‘State’ means each State of the United States, the District
of Columbia, and each commonwealth and territory or possession of the United States.’”.

(b) Conforming Table of Contents Amendment.—The table of contents of the Help America Vote Act of 2002 (52 U.S.C. 20901 note), as amended by section 2, is further amended by inserting after the item related to section 297 (relating to the replacement of outdated voting machines) the following:


“Sec. 298. Grants for education and training of election officials.”.

SEC. 4. GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS.

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

“Sec. 284. Grants for testing open source software.

“(a) In General.—The Commission shall make grants to States or any political subdivision thereof to conduct pilot testing with respect to, and carry out the implementation of, voting systems that use—

“(1) non-proprietary open source software; and

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

“(1) each component of the voting system that is the subject of the grant, including complete build and configuration instructions and related documents for compiling the source code into object code; and

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

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

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

“SEC. 285. GRANTS FOR A COMMON DATA FORMAT ALLOWING FOR VOTING-EQUIPMENT DEVICE INTEROPERABILITY.

“(a) IN GENERAL.—The National Institute of Standards and Technology shall develop, or make grants to one
or more eligible entities to develop, a common data format allowing for voting-equipment device interoperability.

“(b) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section $5,000,000 for the period of fiscal years 2017 through 2018.”.

(b) Conforming Table of Contents Amendment.—The table of contents of the Help America Vote Act of 2002 (52 U.S.C. 20901 note), as amended by section 2, is further amended by inserting after the item related to section 283 (relating to the authorization of appropriations for the pilot program for testing of equipment and technology) the following:

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

SEC. 5. DEPOSIT OF ELECTION-DEDICATED VOTING SYSTEM TECHNOLOGY IN NATIONAL SOFTWARE REFERENCE LIBRARY.

(a) Deposit Required; Conditions for Disclosure.—Section 301(a) of the Help America Vote Act of 2002 (42 U.S.C. 15481(a)) is amended by adding at the end the following new paragraph:

“(7) Prohibiting use of election-dedicated voting system technologies not deposited with National Software Reference Library; disclosure requirements.—
“(A) Prohibition.—

“(i) In general.—A voting system used in an election for Federal office in a State may not at any time during the election contain or use any election-dedicated voting system technology which is not deposited by the State (or, at the option of the State, by the vendor of the technology) with the National Software Reference Library of the National Institute of Standards and Technology prior to the date of the election, to be held in escrow and subject to disclosure in accordance with subparagraph (B).

“(ii) Extension of deadline for deposit.—If the chief State election official certifies to the Director of the National Institute of Standards and Technology prior to the date of the election that, because of a revision to the election-dedicated voting system technology which is made less than 30 days prior to the date of the election, the State or vendor is unable to deposit the technology in accordance with clause (i) prior to the date of the
election, the voting system used in the election may contain or use the technology if—

“(I) the chief State election official approves the use of the technology for the election; and

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

“(iii) Enforcement of vendor responsibilities.—If a State opts to require the vendor of election-dedicated voting system technology to deposit the technology in accordance with this subparagraph and the vendor fails to do so, the Attorney General may bring a civil action against the vendor in an appropriate district court for such relief as may be appropriate, including injunctive relief or an order for a civil penalty in an amount not to exceed $500,000.

“(B) Requirement for disclosure and limitation on restricting disclosure.—With respect to any election-dedicated voting system technology which is deposited under
subparagraph (A), the Director of the National Institute of Standards and Technology shall—

“(i) hold the technology in escrow; and

“(ii) disclose technology and information regarding the technology to another person if—

“(I) the person is a qualified person described in subparagraph (C) who has entered into a nondisclosure agreement with respect to the technology which meets the requirements of subparagraph (D); or

“(II) the Director is permitted or required to disclose the technology to the person under the law of the applicable State, in accordance with the terms and conditions applicable under such law.

“(C) QUALIFIED PERSONS DESCRIBED.—With respect to the disclosure of election-dedicated voting system technology under subparagraph (B)(ii)(I), a ‘qualified person’ is any of the following:
“(i) A governmental entity with responsibility for the administration of voting and election-related matters in elections for Federal office, for purposes of reviewing, analyzing, or reporting on the technology.

“(ii) If permitted under a court order, a party to post-election litigation challenging the result of an election or the administration or use of the technology used in an election, but only to the extent permitted under the terms and conditions of such court order.

“(iii) A person who reviews, analyzes, or reports on the technology solely for an investigation or inquiry concerning the accuracy or integrity of the technology pursuant to clause (i) or (ii).

“(D) REQUIREMENTS FOR NONDISCLOSURE AGREEMENTS.—A nondisclosure agreement entered into with respect to an election-dedicated voting system technology meets the requirements of this subparagraph if the agreement—
“(i) is limited in scope to coverage of
the technology disclosed under subpara-
graph (B) and any trade secrets and intel-
lectual property rights related thereto;

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

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

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

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

“(vi) is silent as to damages awarded
for breach of the agreement, other than a
reference to damages available under appli-
cable law;
“(vii) allows disclosure of evidence relating to possible criminal conduct or other violations of law, including in response to a subpoena or warrant;

“(viii) allows disclosures and testimony to legislative branch authorities, judicial proceedings, and executive branch investigations 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 SYSTEM TECHNOLOGY DEFINED.—For purposes of this paragraph:

“(i) IN GENERAL.—The term ‘election-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 produced by the trusted build and any file signatures to validate that it is unmodified.

“(V) Installation devices and software file signatures.

“(ii) Exclusion.—Such term does not include ‘commercial-off-the-shelf’ software and hardware defined under the voluntary voting system guidelines adopted by the Commission under section 222 which are in effect as of the date of the election involved.

“(F) Trusted Build Defined.—For purposes of this paragraph, the term ‘trusted build’ means a witnessed software build in which source code is converted to machine-readable binary instructions (executable code) in a manner providing security measures that help
ensure that the executable code is a verifiable
and faithful representation of the source code.”.

(b) Effective Date.—The amendment made by
this section shall apply with respect to elections occurring
during 2016 or any succeeding year.

(c) Authorization of Appropriations for Na-
tional Institute of Standards and Technology.—
There are authorized to be appropriated to the National
Institute of Standards and Technology for each fiscal year
such sums as may be necessary to enable the Institute,
including the National Software Reference Library of the
Institute, to carry out paragraph (7) of section 301(a) of
the Help America Vote Act of 2002, as added by section
2(a).