H. R.____

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

Ms. GABBARD introduced the following bill; which was referred to the Committee on

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.

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

SECTION 1. SHORT TITLE; SENSE OF CONGRESS.

(a) Short Title.—This Act may be cited as the
“Securing America’s Elections Act of 2019”.

(b) Sense of Congress.—It is the sense of Con-
gress that according to the Department of Homeland Se-
curity there were attempts to hack the election infrastructure of 21 States during the 2016 elections. The failing security and vulnerabilities in our national election infrastructure were later confirmed and highlighted by the hacking community in a report issued in September 2017, after the DEFCON 25 conference in Las Vegas, Nevada. A subsequent report issued in September 2018, after the DEFCON 26 Conference, highlighted the need for Federal funding to States to improve the security of election infrastructure. In light of these findings, the Government must act with all deliberate purpose to ensure that the integrity of elections in the United States is protected against hackers.

SEC. 2. PROMOTING ACCURACY, INTEGRITY, AND SECURITY THROUGH VOTER-VERIFIED PERMANENT PAPER BALLOT.

(a) BALLOT VERIFICATION AND AUDIT CAPACITY.—

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

“(2) BALLOT VERIFICATION AND AUDIT CAPACITY.—

“(A) VOTER-VERIFIED PAPER BALLOTS.—

“(i) VERIFICATION.—(I) The voting system shall require the production of a
voter's vote that shall be created by or made available for inspection and verification by the individual voter before the voter's vote is cast and counted. For purposes of this subclause, a voter-verified paper ballot includes (but is not limited to) a paper ballot marked by the voter for the purpose of being counted by hand or read by an optical scanner or other similar device, a paper ballot prepared by the voter to be mailed to an election official (whether from a domestic or overseas location), a paper ballot created through the use of a ballot marking device or system, or a paper ballot produced by a touch screen or other electronic voting machine, so long as in each case the voter is permitted to verify the ballot in a paper form in accordance with this subparagraph.

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

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

“(ii) **Preservation.**—The voter-verified paper ballot produced in accordance with clause (i) shall be used as the official ballot for purposes of any recount or audit conducted with respect to any election for Federal office in which the voting system is used, and shall be preserved in accordance with regulations promulgated by the Commission to establish criteria for the proper preservation and retention of the official ballots in the election.

“(iii) **Manual Audit Capacity.**—Each paper ballot produced pursuant to clause (i) shall be suitable for a manual audit equivalent to that of a paper ballot voting system, in accordance with the methods described in subparagraph (B).
“(B) Approved methods for manual audits.—The methods described in this subparagraph with respect to the manual audit of voter-verified paper ballots are—

“(i) audits conducted through the use of programmable electronic counting machines which are not capable of being connected to the Internet, as determined in accordance with regulations promulgated by the Commission; or

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

“(C) Resolution of disputes when paper ballots have been shown to be compromised.—In the event that the paper ballots produced pursuant to subparagraph (A) with respect to an election for Federal office have been compromised, the State shall resolve the dispute over the results of the election in accordance with dispute resolution processes established under regulations promulgated by the Commission.

“(D) Deadline for promulgation of regulations.—The Commission shall promul-
gate the regulations described in this paragraph not later than June 30, 2019.”.

(2) Conforming Amendment Clarifying Applicability of Alternative Language Accessibility.—Section 301(a)(4) of such Act (52 U.S.C. 21081(a)(4)) is amended by inserting “(including the paper ballots required to be produced under paragraph (2))” after “voting system”.

(3) Other Conforming Amendments.—Section 301(a)(1) of such Act (52 U.S.C. 21081(a)(1)) is amended—

(A) in subparagraph (A)(i), by striking “counted” and inserting “counted, in accordance with paragraphs (2) and (3)”;

(B) in subparagraph (A)(ii), by striking “counted” and inserting “counted, in accordance with paragraphs (2) and (3)”;

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

(D) in subparagraph (B)(ii), by striking “counted” and inserting “counted, in accordance with paragraphs (2) and (3)”.

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(b) Availability of Additional Funding To Enable States To Meet Costs of Revised Requirement.—

(1) Extension of requirements payments for meeting revised requirement; amounts deemed to meet requirements for emergency funding.—Section 257(a) of such Act (52 U.S.C. 21007(a)) is amended by adding at the end the following new paragraph:

“(5) For fiscal year 2019, such sums as may be necessary to enable States to 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 2019. 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 (e)” 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 2019.—

“(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 for fiscal year 2019 shall be equal to the State’s estimate of the reasonable costs the State expects to incur to meet the requirements referred to in paragraph (3), as contained in the statement filed by the State with the Commission under section 253(f)(1)(A)(ii).

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

“(A) the amount of the payment; over
“(B) the actual costs incurred by the State in meeting the requirements referred to in paragraph (3), as contained in the statement filed by the State with the Commission under section 253(f)(1)(B).

“(3) Requirements described.—The requirements referred to in this paragraph are the requirements of section 301(a)(2) (relating to ballot verification and audit capacity) which are first imposed on the State pursuant to the amendments made by section 2(a) of the Securing America’s Elections Act of 2019.”.

(3) Revised conditions for receipt of funds.—Section 253 of such Act (52 U.S.C. 21003) is amended—

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

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

“(f) Special Rule for Fiscal Year 2019.—

“(1) In general.—Notwithstanding any other provision of this part, a State is eligible to receive a requirements payment from funds appropriated for fiscal year 2019 if, at any time after the funds are
appropriated, the chief executive officer of the State, or designee, in consultation and coordination with the chief State election official—

“(A) files a statement with the Commission—

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

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

“(B) certifies to the Commission that, upon completing the replacement or upgrading of its voting systems to meet such requirements, the State will file a statement with the Commission containing the actual costs incurred by the State in meeting such requirements.

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

(4) PERMITTING USE OF FUNDS FOR REIMBURSEMENT FOR COSTS PREVIOUSLY INCURRED.—Section 251(c)(1) of such Act (52 U.S.C. 21001(c)(1)) is amended by striking the period at the end and inserting the following: “, or as a reimbursement for any costs incurred in meeting the requirements of section 301(a)(2) which are first imposed pursuant to the amendments made by section 2(a) of the Securing America’s Elections Act of 2018 or in otherwise replacing or upgrading voting systems in response to such amendments.”.

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

(6) Effective date.—The amendments made
by this subsection shall apply with respect to fiscal
years beginning with fiscal year 2019.

(e) Study and Report on Use of Open-Source
Software in Voting Systems.—

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

(2) Report.—Not later than July 1, 2023, the
Secretary and the Commission shall submit to Con-
gress a report on the study conducted under para-
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) IN GENERAL.—Except as provided in paragraph (2), each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.

“(2) SPECIAL RULE FOR CERTAIN REQUIREMENTS.—The requirements of subsection (a)(2) which are first imposed on a State and jurisdiction pursuant to the amendments made by section 2(a) of the Securing America’s Elections Act of 2019 shall apply with respect to the regularly scheduled general election for Federal office held in November 2020 and each succeeding election for Federal office.”.