

108TH CONGRESS  
2D SESSION

# S. 2313

To amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 8, 2004

Mr. GRAHAM of Florida (for himself, Mrs. CLINTON, Mrs. BOXER, Mr. NELSON of Florida, Mr. SCHUMER, Mr. LAUTENBERG, Mr. HOLLINGS, and Mrs. LINCOLN) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

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## A BILL

To amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Restore Elector Confidence in Our Representative De-  
6 mocracy Act of 2004” or the “RECORD Act of 2004”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of  
8 this Act is as follows:

- Sec. 1. Short title; table of contents.  
 Sec. 2. Promoting accuracy, integrity, and security through preservation of a voter-verified permanent record or hard copy.  
 Sec. 3. Change in deadline for compliance with standards.  
 Sec. 4. Extension of Help America Vote Act waiver request deadline; requirement to deploy interim paper ballot voting system.  
 Sec. 5. Requirement for Federal certification of technological security of voter registration lists.  
 Sec. 6. Repeal of exemption of Election Assistance Commission from certain Government contracting requirements.  
 Sec. 7. Requirement for mandatory recounts.  
 Sec. 8. Specific, delineated requirement of study, testing, and development of best practices.  
 Sec. 9. Voter verification and audit capacity funding.  
 Sec. 10. Reports and provision of security consultation services.  
 Sec. 11. Effective date.

1 **SEC. 2. PROMOTING ACCURACY, INTEGRITY, AND SECUR-**  
 2 **ITY THROUGH PRESERVATION OF A VOTER-**  
 3 **VERIFIED PERMANENT RECORD OR HARD**  
 4 **COPY.**

5 (a) VOTER VERIFICATION AND MANUAL AUDIT CA-  
 6 PACITY.—

7 (1) IN GENERAL.—Section 301(a)(2) of the  
 8 Help America Vote Act of 2002 (42 U.S.C.  
 9 15481(a)(2)) is amended to read as follows:

10 “(2) VOTER VERIFICATION AND MANUAL AUDIT  
 11 CAPACITY.—

12 “(A) VOTER VERIFICATION.—

13 “(i) The voting system shall produce  
 14 an individual voter-verifiable paper record  
 15 of the vote that shall be made available for  
 16 inspection and verification by the voter at  
 17 the time the vote is cast.

1           “(ii) The voting system shall provide  
2           the voter with an opportunity to correct  
3           any error made by the system in the voter-  
4           verifiable paper record before the perma-  
5           nent voter-verified paper record is pre-  
6           served in accordance with subparagraph  
7           (B)(i).

8           “(B) MANUAL AUDIT CAPACITY.—The per-  
9           manent voter verified paper record produced in  
10          accordance with subparagraph (A) shall—

11           “(i) be preserved within the polling  
12           place, in the manner, if any, in which all  
13           other paper ballots are preserved within  
14           that polling place, or, in the manner em-  
15           ployed by the jurisdiction for preserving  
16           paper ballots in general, for later use in  
17           any manual audit;

18           “(ii) be suitable for a manual audit  
19           equivalent or superior to that of a paper  
20           ballot voting system; and

21           “(iii) be available as an official record  
22           and shall be the official record used for  
23           any recount conducted with respect to any  
24           election in which the system is used.”.

1           (2) PROHIBITION OF USE OF THERMAL  
2 PAPER.—Section 301(a) of the Help America Vote  
3 Act of 2002 (42 U.S.C. 15481(a)) is amended by  
4 adding at the end the following new paragraph:

5           “(7) PROHIBITION OF USE OF THERMAL  
6 PAPER.—The permanent voter verified paper record  
7 produced in accordance with paragraph (2)(A) shall  
8 not be produced on thermal paper, but shall instead  
9 be produced on paper of archival quality.”.

10          (3) CONFORMING AMENDMENT.—Section  
11 301(a)(1)(A)(ii) of the Help America Vote Act (42  
12 U.S.C. 15481(a)(1)(A)(ii)) is amended by inserting  
13 “and before the permanent paper record is produced  
14 under paragraph (2)” before the semicolon at the  
15 end.

16          (b) VOTER VERIFICATION OF RESULTS FOR INDIVID-  
17 UALS WITH DISABILITIES.—Section 301(a)(3) of the  
18 Help America Vote Act of 2002 (42 U.S.C. 15481(a)(3))  
19 is amended to read as follows:

20           “(3) ACCESSIBILITY AND VOTER-VERIFICATION  
21 OF RESULTS FOR INDIVIDUALS WITH DISABIL-  
22 ITIES.—

23           “(A) IN GENERAL.—Subject to subpara-  
24 graph (B), the voting system shall—

1           “(i) be accessible for individuals with  
2           disabilities, including nonvisual accessi-  
3           bility for the blind and visually impaired,  
4           in a manner that provides the same oppor-  
5           tunity for access and participation (includ-  
6           ing privacy and independence) as for other  
7           voters;

8           “(ii) satisfy the requirement of sub-  
9           paragraph (A) through the use of at least  
10          one direct recording electronic voting sys-  
11          tem or other voting system equipped for  
12          individuals with disabilities at each polling  
13          place, and such voting system shall meet  
14          the requirements of paragraph (2)(A) by  
15          using a mechanism that separates the  
16          function of vote generation from the func-  
17          tion of vote casting without requiring the  
18          voter to view or handle paper; and

19          “(iii) if purchased with funds made  
20          available under title II on or after January  
21          1, 2006, meet the voting system standards  
22          for disability access (as outlined in this  
23          subparagraph).

24          “(B) TRANSITIONAL COMPLIANCE.—If an  
25          interim paper ballot voting system is deployed

1 in accordance with section 102(a)(3)(C), with re-  
2 spect to any election for Federal office held on  
3 or after the date of the enactment of the Restore  
4 Elector Confidence in Our Representative De-  
5 mocracy Act of 2004 and before January 1,  
6 2006, individuals with disabilities shall have the  
7 option of using such interim paper ballot voting  
8 system, any voting system purchased by the  
9 State or jurisdiction with funds made available  
10 under section 102, or any other voting system  
11 used by the State or jurisdiction before the date  
12 of the enactment of the Restore Elector Con-  
13 fidence in our Representative Democracy Act of  
14 2004 that may be accessible for individuals with  
15 disabilities. Nothing in this paragraph shall be  
16 construed to waive the disability access require-  
17 ments of this Act or the Voting Rights Act of  
18 1965.”.

19 (c) ADDITIONAL VOTING SYSTEM REQUIREMENTS.—  
20 Section 301(a) of the Help America Vote Act of 2002 (42  
21 U.S.C. 15481(a)), as amended by subsection (a)(2), is  
22 amended by adding to the end the following new para-  
23 graphs:

24 “(8) INSTRUCTION OF ELECTION OFFICIALS.—  
25 Each State shall ensure that election officials are in-

1       structured on the right of any individual who requires  
2       assistance to vote by reason of blindness, other dis-  
3       ability, or inability to read or write to be given as-  
4       sistance by a person chosen by that individual under  
5       section 208 of the Voting Rights Act of 1965.

6               “(9) PROHIBITION OF USE OF UNDISCLOSED  
7       SOFTWARE IN VOTING SYSTEMS.—No voting system  
8       shall at any time contain or use any undisclosed  
9       software. Any voting system containing or using  
10       software shall disclose the source code, object code,  
11       and executable representation of that software to the  
12       Commission, and the Commission shall make that  
13       source code, object code, and executable representa-  
14       tion available for inspection upon request to any cit-  
15       izen.

16               “(10) PROHIBITION OF USE OF WIRELESS COM-  
17       MUNICATIONS DEVICES IN VOTING SYSTEMS.—No  
18       voting system shall use any wireless communication  
19       device.

20               “(11) CERTIFICATION OF SOFTWARE AND  
21       HARDWARE.—All software and hardware used in any  
22       electronic voting system shall be certified by labora-  
23       tories accredited by the Commission as meeting the  
24       requirements of paragraphs (9) and (10).

1           “(12) SECURITY STANDARDS FOR MANUFAC-  
2           TURERS OF VOTING SYSTEMS USED IN FEDERAL  
3           ELECTIONS.—

4           “(A) IN GENERAL.—No voting system may  
5           be used in an election for Federal office unless  
6           the manufacturer of such system meets the re-  
7           quirements described in subparagraph (B).

8           “(B) REQUIREMENTS DESCRIBED.—The  
9           requirements described in this subparagraph  
10          are as follows:

11           “(i) The manufacturer shall document  
12           the chain of custody for the handling of  
13           software used in connection with voting  
14           systems.

15           “(ii) The manufacturer shall ensure  
16           that any software used in connection with  
17           the voting system is not transferred over  
18           the Internet.

19           “(iii) In the same manner and to the  
20           same extent described in paragraph (9),  
21           the manufacturer shall provide the codes  
22           used in any software used in connection  
23           with the voting system to the Commission  
24           and may not alter such codes once certifi-

1 cation has occurred unless such system is  
2 recertified.

3 “(iv) The manufacturer shall imple-  
4 ment procedures to ensure internal secu-  
5 rity, as required by the Director of the Na-  
6 tional Institute of Standards and Tech-  
7 nology.

8 “(v) The manufacturer shall meet  
9 such other requirements as may be estab-  
10 lished by the Director of the National In-  
11 stitute of Standards and Technology.”.

12 **SEC. 3. CHANGE IN DEADLINE FOR COMPLIANCE WITH**  
13 **STANDARDS.**

14 Section 301(d) of the Help America Vote Act of 2002  
15 (42 U.S.C. 15481(d)) is amended to read as follows:

16 “(d) EFFECTIVE DATE.—Each State and jurisdiction  
17 shall be required to comply with—

18 “(1) the requirements of paragraphs (1), (2),  
19 (3)(B), (8), (9), and (10) of section 301(a) in time  
20 for elections for Federal office beginning with the  
21 regularly scheduled general election to be held in  
22 November 2004; and

23 “(2) the other requirements of this section on  
24 and after January 1, 2006.”.

1 **SEC. 4. EXTENSION OF HELP AMERICA VOTE ACT WAIVER**  
2 **REQUEST DEADLINE; REQUIREMENT TO DE-**  
3 **PLOY INTERIM PAPER BALLOT VOTING SYS-**  
4 **TEM.**

5 (a) EXTENSION OF HELP AMERICA VOTE ACT WAIV-  
6 ER REQUEST DEADLINE.—Section 102(a)(3)(B) of the  
7 Help America Vote Act of 2002 (42 U.S.C.  
8 15302(a)(3)(b)) is amended by striking “January 1,  
9 2004” and inserting “August 1, 2004”.

10 (b) REQUIREMENT TO DEPLOY INTERIM PAPER  
11 BALLOT VOTING SYSTEM.—Section 102(a)(3) of the Help  
12 America Vote Act of 2002 (42 U.S.C. 15302(a)(3)) is  
13 amended by adding at the end the following new subpara-  
14 graphs:

15 “(C) If a State either requests the waiver  
16 described in subparagraph (B) or is unable to  
17 comply with the requirements of section 301  
18 that are due by November 2004 in accordance  
19 with the deadline set forth in section 301(d),  
20 the State shall use a paper ballot voting system  
21 in November 2004 and, so long as such inabil-  
22 ity continues, at any time in 2005 that complies  
23 with such requirements of section 301, based on  
24 paper ballot voting systems in use in the juris-  
25 diction, if any, that shall be deemed compliant  
26 with such requirements of section 301 by the

1 Commission for use in any Federal election be-  
2 tween and including the general election in No-  
3 vember 2004 and the last Federal election in  
4 2005. The Commission shall reimburse the  
5 State or jurisdiction for any costs incurred in  
6 using such interim paper ballot voting system.

7 “(D) The Commission will certify voting  
8 equipment that meets the requirements of sec-  
9 tion 301. States must use certified voting  
10 equipment, or the interim paper ballot system  
11 described in subparagraph (C), or apply to the  
12 Commission for a waiver which the Commission  
13 may grant if the State demonstrates that it is  
14 technologically impossible to comply with such  
15 requirements. States receiving such a waiver  
16 shall submit reports to the Commission dem-  
17 onstrating the steps the State is taking to rem-  
18 edy the technological impossibility.”

19 **SEC. 5. REQUIREMENT FOR FEDERAL CERTIFICATION OF**  
20 **TECHNOLOGICAL SECURITY OF VOTER REG-**  
21 **ISTRATION LISTS.**

22 Section 303(a)(3) of the Help America Vote Act of  
23 2002 (42 U.S.C. 15483(a)(3)) is amended by striking  
24 “measures to prevent the” and inserting “measures, as

1 certified by the Election Assistance Commission, to pre-  
2 vent”.

3 **SEC. 6. REPEAL OF EXEMPTION OF ELECTION ASSISTANCE**  
4 **COMMISSION FROM CERTAIN GOVERNMENT**  
5 **CONTRACTING REQUIREMENTS.**

6 (a) IN GENERAL.—Section 205 of the Help America  
7 Vote Act of 2002 (42 U.S.C. 15325) is amended by strik-  
8 ing subsection (e).

9 (b) EFFECTIVE DATE.—The amendment made by  
10 subsection (a) shall apply with respect to contracts entered  
11 into by the Election Assistance Commission on or after  
12 the date of enactment of this Act.

13 **SEC. 7. REQUIREMENT FOR MANDATORY RECOUNTS.**

14 Beginning with the regularly scheduled election for  
15 Federal office to be held in November 2004, the Election  
16 Assistance Commission shall conduct random unan-  
17 nounced manual mandatory recounts of the voter-verified  
18 records of each election for Federal office (and, at the op-  
19 tion of the State or jurisdiction involved, of elections for  
20 State and local office held at the same time as such an  
21 election for Federal office) in 2 percent of the jurisdictions  
22 in each State and with respect to 2 percent of the ballots  
23 cast by uniformed and overseas voters immediately fol-  
24 lowing the election and shall promptly publish the results  
25 of those recounts in the Federal Register. In addition, the

1 verification system used by the Election Assistance Com-  
2 mission shall meet the error rate standards described in  
3 section 301(a)(5) of the Help America Vote Act of 2002.

4 **SEC. 8. SPECIFIC, DELINEATED REQUIREMENT OF STUDY,**  
5 **TESTING, AND DEVELOPMENT OF BEST PRAC-**  
6 **TICES.**

7 Subtitle C of title II of the Help America Vote Act  
8 of 2002 (42 U.S.C. 15381 et seq.) is amended by—

9 (1) redesignating section 247 as section 248;

10 and

11 (2) by inserting after section 246 the following  
12 new section:

13 **“SEC. 247. STUDY, TESTING, AND DEVELOPMENT OF BEST**  
14 **PRACTICES TO ENHANCE ACCESSIBILITY**  
15 **AND VOTER-VERIFICATION MECHANISMS**  
16 **FOR DISABLED VOTERS.**

17 “The Election Assistance Commission shall study,  
18 test, and develop best practices to enhance accessibility  
19 and voter-verification mechanisms for individuals with dis-  
20 abilities.”.

21 **SEC. 9. VOTER VERIFICATION AND AUDIT CAPACITY FUND-**  
22 **ING.**

23 Title II of the Help America Vote Act of 2002 (42  
24 U.S.C. 15321 et seq.) is amended by adding at the end  
25 the following new part:

1       **“PART 7—VOTER-VERIFICATION AND AUDIT**

2                               **CAPACITY FUNDING**

3       **“SEC. 297. VOTER-VERIFICATION AND AUDIT CAPACITY**

4                               **FUNDING.**

5               “(a) PAYMENTS TO STATES.—Subject to subsection  
6 (b), not later than the date that is 30 days after the date  
7 of the enactment of the Restore Elector Confidence in Our  
8 Representative Democracy Act of 2004, the Election As-  
9 sistance Commission shall pay to each State an amount  
10 to assist the State in paying for the implementation of  
11 the voter-verification and audit capacity requirements of  
12 paragraphs (2) and (3) of section 301(a), as amended by  
13 subsections (a) and (b) of section 2 of such Act.

14               “(b) LIMITATION.—The amount paid to a State  
15 under subsection (a) for each voting system purchased by  
16 a State may not exceed the average cost of adding a print-  
17 er with accessibility features to each type of voting system  
18 that the State could have purchased to meet the require-  
19 ments described in such subsection.

20       **“SEC. 298. APPROPRIATION.**

21               “There are authorized and appropriated  
22 \$150,000,000 to the Election Assistance Commission,  
23 without fiscal year limitation, to make payments to States  
24 in accordance with section 297(a). In addition, there are  
25 authorized and appropriated \$5,000,000 to the Election  
26 Assistance Commission for each of fiscal years 2004

1 through 2006, in addition to any amounts otherwise ap-  
 2 propriated, for providing reimbursement to States and ju-  
 3 risdictions for costs incurred in using the interim paper  
 4 ballot voting system in accordance with section  
 5 102(a)(3)(C). Furthermore, there are authorized and ap-  
 6 propriated \$5,000,000 to the Election Assistance Commis-  
 7 sion, for each of fiscal years 2004 through 2006, in addi-  
 8 tion to any amounts otherwise appropriated for adminis-  
 9 trative costs to assist with conducting recounts, the imple-  
 10 mentation of voter verification systems, and improved se-  
 11 curity measures.”.

12 **SEC. 10. REPORTS AND PROVISION OF SECURITY CON-**  
 13 **SULTATION SERVICES.**

14 Subtitle C of title II of the Help America Vote Act  
 15 of 2002 (42 U.S.C. 15381 et seq.), as amended by section  
 16 8, is amended by—

17 (1) redesignating section 248 as section 249;

18 and

19 (2) by inserting after section 247 the following  
 20 new section:

21 **“SEC. 248. REPORTS AND PROVISION OF SECURITY CON-**  
 22 **SULTATION SERVICES.**

23 “(a) REPORT TO CONGRESS ON SECURITY RE-  
 24 VIEW.—Not later than 6 months after the date of the en-  
 25 actment of the Restore Elector Confidence in Our Rep-

1 resentative Democracy Act of 2004, the Commission, in  
2 consultation with the Director of the National Institute  
3 of Standards and Technology, shall submit to Congress  
4 a report on a proposed security review and certification  
5 process for all voting systems used in elections for Federal  
6 office, including a description of the certification process  
7 to be implemented under section 231.

8       “(b) REPORT TO CONGRESS ON OPERATIONAL AND  
9 MANAGEMENT SYSTEMS.—Not later than 3 months after  
10 the date of the enactment of the Restore Elector Con-  
11 fidence in Our Representative Democracy Act of 2004, the  
12 Commission shall submit to Congress a report on oper-  
13 ational and management systems applicable with respect  
14 to elections for Federal office, including the security  
15 standards for manufacturers described in section  
16 301(a)(7), that should be employed to safeguard the secu-  
17 rity of voting systems, together with a proposed schedule  
18 for the implementation of each such system.

19       “(c) PROVISION OF SECURITY CONSULTATION SERV-  
20 ICES.—

21           “(1) IN GENERAL.—On and after the date of  
22 the enactment of the Restore Elector Confidence in  
23 Our Representative Democracy Act of 2004, the Di-  
24 rector of the National Institute of Standards and  
25 Technology shall provide security consultation serv-

1       ices to States and local jurisdictions with respect to  
2       the administration of elections for Federal office.

3               “(2) APPROPRIATION.—To carry out the pur-  
4       poses of paragraph (1), \$2,000,000 is appropriated  
5       for each of fiscal years 2004 through 2006.”.

6 **SEC. 11. EFFECTIVE DATE.**

7       Except as provided in section 6(b), the amendments  
8       made by this Act shall take effect as if included in the  
9       enactment of the Help America Vote Act of 2002.

○