

110TH CONGRESS
2^D SESSION

H. R. 7245

To amend the Help America Vote Act of 2002 to prohibit the use in any election for Federal office of any election-dedicated voting system technology which has not been certified for use in the election by the State which will administer the election and to establish the standards under which such technology and information regarding the technology may be disclosed, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 2008

Mr. HOLT introduced the following bill; which was referred to the Committee on House Administration

A BILL

To amend the Help America Vote Act of 2002 to prohibit the use in any election for Federal office of any election-dedicated voting system technology which has not been certified for use in the election by the State which will administer the election and to establish the standards under which such technology and information regarding the technology may be disclosed, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Election Software Dis-
3 closure Act of 2008”.

4 **SEC. 2. PROHIBITING USE OF UNCERTIFIED ELECTION-**
5 **DEDICATED VOTING SYSTEM TECHNOLOGIES;**
6 **DISCLOSURE REQUIREMENTS.**

7 (a) IN GENERAL.—Section 301(a) of the Help Amer-
8 ica Vote Act of 2002 (42 U.S.C. 15481 et seq.) is amend-
9 ed by adding at the end the following new paragraph:

10 “(7) PROHIBITING USE OF UNCERTIFIED ELEC-
11 TION-DEDICATED VOTING SYSTEM TECHNOLOGIES;
12 DISCLOSURE REQUIREMENTS.—

13 “(A) IN GENERAL.—A voting system used
14 in an election for Federal office in a State may
15 not at any time during the election contain or
16 use any election-dedicated voting system tech-
17 nology—

18 “(i) which has not been certified by
19 the State for use in the election; and

20 “(ii) which has not been deposited
21 with the appropriate State and local elec-
22 tion officials to be held in escrow and dis-
23 closed in accordance with this paragraph.

24 “(B) REQUIREMENT FOR AND RESTRIC-
25 TIONS ON DISCLOSURE.—A State or local elec-
26 tion official with whom an election-dedicated

1 voting system technology has been deposited
2 shall—

3 “(i) hold the technology in escrow;

4 and

5 “(ii) disclose technology and informa-
6 tion regarding the technology to another
7 person if—

8 “(I) the person is a qualified per-
9 son described in subparagraph (C)
10 who has entered into a nondisclosure
11 agreement with respect to the tech-
12 nology which meets the requirements
13 of subparagraph (D); or

14 “(II) the official is required to
15 disclose the technology to the person
16 under State law, in accordance with
17 the terms and conditions applicable
18 under such law.

19 “(C) QUALIFIED PERSONS DESCRIBED.—
20 With respect to the disclosure of election-dedi-
21 cated voting system technology by an election
22 official under subparagraph (B)(ii)(I), a ‘quali-
23 fied person’ is any of the following:

24 “(i) A governmental entity with re-
25 sponsibility for the administration of vot-

1 ing and election-related matters for pur-
2 poses of reviewing, analyzing, or reporting
3 on the technology.

4 “(ii) A party to pre- or post-election
5 litigation challenging the result of an elec-
6 tion or the administration or use of the
7 technology used in an election, including
8 but not limited to election contests or chal-
9 lenges to the certification of the tech-
10 nology, or an expert for a party to such
11 litigation, for purposes of reviewing or ana-
12 lyzing the technology to support or oppose
13 the litigation, and all parties to the litiga-
14 tion shall have access to the technology for
15 such purposes.

16 “(iii) A person not described in clause
17 (i) or (ii) who reviews, analyzes, or reports
18 on the technology solely for an academic,
19 scientific, technological, or other investiga-
20 tion or inquiry concerning the accuracy or
21 integrity of the technology.

22 “(D) REQUIREMENTS FOR NONDISCLO-
23 SURE AGREEMENTS.—A nondisclosure agree-
24 ment entered into with respect to an election-
25 dedicated voting system technology meets the

1 requirements of this subparagraph if the agree-
2 ment—

3 “(i) is limited in scope to coverage of
4 the technology disclosed under subpara-
5 graph (B) and any trade secrets and intel-
6 lectual property rights related thereto;

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

11 “(iii) exempts from coverage any in-
12 formation the signatory lawfully obtained
13 from another source or any information in
14 the public domain;

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

18 “(v) prohibits the use of injunctions
19 barring a signatory from carrying out any
20 activity authorized under subparagraph
21 (C), including injunctions limited to the
22 period prior to a trial involving the tech-
23 nology;

24 “(vi) is silent as to damages awarded
25 for breach of the agreement, other than a

1 reference to damages available under appli-
2 cable law;

3 “(vii) allows disclosure of evidence of
4 crime, including in response to a subpoena
5 or warrant;

6 “(viii) allows the signatory to perform
7 analyses on the technology (including by
8 executing the technology), disclose reports
9 and analyses that describe operational
10 issues pertaining to the technology (includ-
11 ing vulnerabilities to tampering, errors,
12 risks associated with use, failures as a re-
13 sult of use, and other problems), and de-
14 scribe or explain why or how a voting sys-
15 tem failed or otherwise did not perform as
16 intended; and

17 “(ix) provides that the agreement
18 shall be governed by the trade secret laws
19 of the applicable State.

20 “(E) ELECTION-DEDICATED VOTING SYS-
21 TEM TECHNOLOGY DEFINED.—For purposes of
22 this paragraph:

23 “(i) IN GENERAL.—The term ‘elec-
24 tion-dedicated voting system technology’
25 means the following:

1 “(I) The source code used for the
2 trusted build and its file signatures.

3 “(II) A complete disk image of
4 the pre-build, build environment, and
5 any file signatures to validate that it
6 is unmodified.

7 “(III) A complete disk image of
8 the post-build, build environment, and
9 any file signatures to validate that it
10 is unmodified.

11 “(IV) All executable code pro-
12 duced by the trusted build and any
13 file signatures to validate that it is
14 unmodified.

15 “(V) Installation devices and
16 software file signatures.

17 “(ii) EXCLUSION.—Such term does
18 not include ‘commercial-off-the-shelf’ soft-
19 ware and hardware defined under under
20 the 2005 voluntary voting system guide-
21 lines adopted by the Commission under
22 section 222.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall apply with respect to each election for

1 Federal office held after the date of the enactment of this
2 Act.

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