

111TH CONGRESS
1ST SESSION

H. R. 3552

To amend the Help America Vote Act of 2002 to clarify the treatment of provisional ballots cast in elections for Federal office, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 10, 2009

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 clarify the treatment of provisional ballots cast in elections for Federal office, 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 “Provisional Ballot
5 Fairness in Counting Act of 2009”.

1 **SEC. 2. UNIFORM STANDARD FOR TREATMENT OF PROVI-**
2 **SIONAL BALLOTS CAST AT INCORRECT POLL-**
3 **ING PLACES.**

4 Section 302(a)(4) of the Help America Vote Act of
5 2002 (42 U.S.C. 15482(a)(4)) is amended to read as fol-
6 lows:

7 “(4) The provisional ballot of an individual who
8 is a registered voter in a jurisdiction in a State and
9 who is eligible to vote in an election for Federal of-
10 fice in the State shall be counted as a vote in such
11 an election if the appropriate State or local election
12 official to whom the ballot or voter information is
13 transmitted under paragraph (3)—

14 “(A) in the case of an election for electors
15 for President or for the office of a Senator, de-
16 termines that the individual is registered to vote
17 in the State in which the provisional ballot is
18 cast; and

19 “(B) in the case of an election for the of-
20 fice of a Member of the House of Representa-
21 tives (including a Delegate or Resident Com-
22 missioner to the Congress), determines that the
23 individual is registered to vote in the Congres-
24 sional district in which the provisional ballot is
25 cast.”.

1 **SEC. 3. MINIMUM CONTENTS OF PROVISIONAL BALLOTS.**

2 Section 302(a)(1) of the Help America Vote Act of
3 2002 (42 U.S.C. 15482(a)(1)) is amended by adding at
4 the end the following new sentence: “The provisional ballot
5 shall include (at a minimum) all information required for
6 the individual to cast a vote in each election for Federal
7 office held at the polling place.”.

8 **SEC. 4. TREATMENT OF VOTERS WHO VOTE AFTER CLOS-**
9 **ING OF POLLING PLACES.**

10 Section 302(c) of the Help America Vote Act of 2002
11 (42 U.S.C. 15482(c)) is amended to read as follows:

12 “(c) EQUAL TREATMENT OF VOTERS WHO VOTE
13 AFTER THE POLLS CLOSE.—Any individual who votes in
14 an election for Federal office as a result of a Federal or
15 State court order or any other order extending the time
16 established for closing the polls by a State law in effect
17 10 days before the date of that election shall cast the indi-
18 vidual’s ballot for the election in the same manner, and
19 under the same terms and conditions, as any individual
20 who votes in the election during the regular hours for the
21 operation of polling places in the State, including the
22 terms and conditions applicable to individuals permitted
23 to cast provisional ballots under this section.”.

1 **SEC. 5. TREATMENT OF BALLOTS AFTER CASTING.**

2 (a) RESPONSIBILITY OF ELECTION OFFICIAL TO NO-
3 TIFY INDIVIDUAL OF DETERMINATION OF ELIGIBILITY OF
4 BALLOT.—

5 (1) IN GENERAL.—Section 302(a)(5) of the
6 Help America Vote Act of 2002 (42 U.S.C.
7 15482(a)(5)) is amended to read as follows:

8 “(5)(A) Not later than 24 hours after deter-
9 mining whether or not the vote of an individual who
10 casts a provisional ballot in an election will be count-
11 ed in that election under this Act, the appropriate
12 State or local election official shall notify the indi-
13 vidual of the determination and (if the determination
14 is made that the vote will not be counted) the rea-
15 sons for the determination and the individual’s right
16 to challenge the determination under the procedures
17 established under subparagraph (B).

18 “(B) Each State shall establish procedures, in-
19 cluding a free access system (such as a toll-free tele-
20 phone number or an Internet website), under which
21 an individual who casts a provisional ballot in an
22 election and who is notified by the appropriate State
23 or local election official that the provisional ballot
24 cast by the individual will not be counted as a vote
25 in the election may challenge the determination prior
26 to the final tabulation of ballots in the election.

1 “(C) In carrying out subparagraph (B), each
2 State shall ensure that, in each jurisdiction of the
3 State, an appropriate State or local election official
4 operates open office hours for at least 8 hours on
5 the day after the date of the election, during which
6 a voter who cast a provisional ballot in the election
7 may contact the official and challenge the deter-
8 mination under the procedures established under
9 subparagraph (B).”.

10 (2) CONFORMING AMENDMENT.—Section
11 302(a) of such Act (42 U.S.C. 15482(a)) is amend-
12 ed in the matter following paragraph (5) by striking
13 “The appropriate State or local official” and all that
14 follows through “paragraph (5)(B).”.

15 (b) PROHIBITING INITIATION OF RECOUNT OR CER-
16 TIFICATION OF RESULTS PRIOR TO REVIEW OF PROVI-
17 SIONAL BALLOTS CAST; STANDARDS FOR DETERMINA-
18 TION OF ACCEPTANCE OF PROVISIONAL BALLOTS.—Sec-
19 tion 302(a) of such Act (42 U.S.C. 15482(a)) is amended
20 by inserting after paragraph (5) the following new para-
21 graphs:

22 “(6) The chief State election official may not
23 make any determination regarding the applicability
24 of any requirement under State law to conduct a re-
25 count of the results of any election for Federal office

1 in the State, or certify the results of any election for
2 Federal office in the State, until all of the votes cast
3 by provisional ballot cast in the election which are
4 to be counted pursuant to this Act have been count-
5 ed.

6 “(7) In making a determination as to whether
7 a vote cast by an individual by provisional ballot will
8 be counted in an election, the chief State election of-
9 ficial shall review not only the official Statewide list
10 of registered voters but any other information which
11 was submitted by the individual in the process of ap-
12 plying to register to vote.”.

13 (c) TREATMENT OF REJECTED PROVISIONAL BAL-
14 LOT AS APPLICATION FOR VOTER REGISTRATION.—Sec-
15 tion 302(a) of such Act (42 U.S.C. 15482(a)), as amended
16 by subsection (b), is amended by inserting after paragraph
17 (7) the following new paragraph:

18 “(8) If a provisional ballot cast by an individual
19 in an election for Federal office is rejected on the
20 ground that the individual is not registered to vote
21 in the election, the ballot shall be treated (for pur-
22 poses of this Act, the National Voter Registration
23 Act of 1993, and applicable State law) as an appli-
24 cation by the individual for voter registration in the
25 appropriate registrar’s jurisdiction with respect to

1 the next election for Federal office held in the juris-
2 diction, under the same terms and conditions appli-
3 cable to applications for voter registration under this
4 Act, including section 303(b)(4) (relating to the
5 treatment of incomplete forms).”.

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

7 Section 302(d) of the Help America Vote Act of 2002
8 (42 U.S.C. 15482(d)) is amended to read as follows:

9 “(d) EFFECTIVE DATE.—

10 “(1) IN GENERAL.—Except as provided in para-
11 graph (2), each State and jurisdiction shall be re-
12 quired to comply with the requirements of this sec-
13 tion on and after January 1, 2004.

14 “(2) DELAYED EFFECTIVE DATE FOR CERTAIN
15 PROVISIONS.—To the extent that any provision of
16 this section was amended by the Provisional Ballot
17 Fairness in Counting Act of 2009, such provision
18 shall apply with respect to the regularly scheduled
19 general election for Federal office held in November
20 2010 and each succeeding election for Federal of-
21 fice.”.

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