

111TH CONGRESS
2D SESSION

H. R. 5229

To amend the Help America Vote Act of 2002 to establish standards for the transparent and accurate tabulation of votes and aggregation of vote counts in elections for Federal office, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 2010

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 establish standards for the transparent and accurate tabulation of votes and aggregation of vote counts 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 “Vote Tabulation Audit
5 Act of 2010”.

1 **SEC. 2. REQUIRING STATES TO MEET STANDARDS FOR**
2 **TRANSPARENT AND ACCURATE TABULATION**
3 **OF VOTES AND AGGREGATION OF VOTE**
4 **COUNTS.**

5 (a) IN GENERAL.—Section 301(a) of the Help Amer-
6 ica Vote Act of 2002 (42 U.S.C. 15481(a)) is amended
7 by adding at the end the following new paragraph:

8 “(7) REQUIREMENTS FOR TRANSPARENCY IN
9 TABULATION OF VOTES AND AGGREGATION OF VOTE
10 COUNTS.—

11 “(A) REQUIREMENTS.—In tabulating votes
12 and determining the aggregate vote count in
13 any election for Federal office, each State shall
14 meet the following requirements:

15 “(i) Upon the closing of the polls at
16 each polling place, the appropriate election
17 official shall tabulate each of the following:

18 “(I) The number of regular bal-
19 lots cast on each voting machine, and
20 the number cast by hand on regular
21 or emergency ballots, at the polling
22 place.

23 “(II) The number of votes per
24 candidate (excluding over-votes).

25 “(III) The number of spoiled bal-
26 lots.

1 “(IV) The number of over-votes,
2 under-votes, and blank votes (or their
3 equivalent) for each candidate.

4 “(V) The number of provisional
5 ballots cast, both on paper and by vot-
6 ing machine.

7 “(VI) The serial number or num-
8 bers (in the case of a system with
9 more than one such number), model,
10 and manufacturer of each voting sys-
11 tem on which votes were recorded at
12 the polling place.

13 “(VII) The total number of indi-
14 viduals who appeared at the polling
15 place to cast ballots, determined by
16 reference to the number of signatures
17 in a sign-in book or other similar
18 independent count.

19 “(VIII) The total number of vot-
20 ers who cast ballots in all elections for
21 Federal office on the ballot at the
22 polling place.

23 “(IX) Such other information as
24 the State may require.

1 “(ii) The appropriate election officials
2 at the polling place shall prepare a prelimi-
3 nary certification of the vote count at the
4 polling place (as tabulated under clause
5 (i)) under the observation of the certified
6 tabulation observers admitted to the poll-
7 ing place under subparagraph (F) (if any),
8 shall announce the vote count orally, and
9 shall prepare and post a paper copy of the
10 preliminary certification for the admitted
11 tabulation observers at the polling place.
12 Such officials shall ensure that each of the
13 certified tabulation observers admitted to
14 the polling place has full access to observe
15 the process by which the preliminary cer-
16 tification is produced and a reasonable pe-
17 riod of time to review the preliminary cer-
18 tification before the polling place is closed,
19 and (if feasible) shall provide such observ-
20 ers with identical duplicate certificates.

21 “(iii) After the requirements of clause
22 (ii) are met, the appropriate election offi-
23 cial, in the manner prescribed by applica-
24 ble State or local law, shall transmit the
25 information contained in such preliminary

1 certification to the central vote tabulation
2 center designated for the tabulation of
3 votes by the chief State election official.

4 “(iv) As soon as practicable after in-
5 formation is entered into the central vote
6 tabulation center under clause (iii), sub-
7 paragraph (B) (with respect to early
8 votes), subparagraph (C) (with respect to
9 absentee ballots), and subparagraph (D)
10 (with respect to provisional ballots counted
11 as votes in the election), the appropriate
12 election official shall display (at a promi-
13 nent location accessible to the public dur-
14 ing regular business hours and in or within
15 reasonable proximity to the polling place) a
16 paper copy of the preliminary certification
17 prepared under clause (ii), and the infor-
18 mation shall be displayed on the official
19 public websites of the applicable local elec-
20 tion official and chief State election official
21 in a manner which displays, together with
22 the name of the designated voting official
23 who entered the information and the date
24 and time the information was entered, each
25 of the following:

1 “(I) The information tabulated
2 under clause (i).

3 “(II) The number of early ballots
4 cast on each day of the early voting
5 period.

6 “(III) The aggregate number of
7 early votes cast for each candidate.

8 “(IV) The number of absentee
9 ballots received on each day on which
10 such ballots are permitted to be re-
11 ceived and counted under State law.

12 “(V) The aggregate number of
13 absentee votes cast for each can-
14 didate.

15 “(VI) The aggregate number of
16 provisional ballots cast.

17 “(VII) The number of provisional
18 votes cast for each candidate.

19 In no event may the information required
20 to be displayed under this clause be dis-
21 played later than noon on the day fol-
22 lowing the date of the election (or, with re-
23 spect to information on early votes, absen-
24 tee ballots, and provisional ballots, prior to
25 the closing of the polls on the date of the

1 election or later than noon on the day fol-
2 lowing the date on which the votes and bal-
3 lots are counted). All of the information re-
4 quired to be posted under this clause shall
5 be presented in a format under which any
6 individual may visit the website and view
7 and download all of the information.

8 “(v) Each website on which informa-
9 tion is posted under clause (iv) shall in-
10 clude information on the procedures by
11 which discrepancies shall be reported to
12 election officials. If any discrepancy exists
13 between the posted information and the
14 relevant preliminary certification, the ap-
15 propriate election official shall display in-
16 formation on the discrepancy on the
17 website on which the information is posted
18 under clause (iv) not later than 24 hours
19 after the official is made aware of the dis-
20 crepancy, and shall maintain the informa-
21 tion on the discrepancy and its resolution
22 (if applicable) on such website during the
23 entire period for which results of the elec-
24 tion are typically maintained on such
25 website.

1 “(vi) The appropriate election official
2 shall preserve archived copies of the pre-
3 liminary certifications prepared under
4 clause (ii) and reports of discrepancies
5 filed by certified tabulation observers for
6 the period of time during which records
7 and papers are required to be retained and
8 preserved pursuant to title III of the Civil
9 Rights Act of 1960 (42 U.S.C. 1974 et
10 seq.) or for the same duration for which
11 archived copies of other records of the elec-
12 tion are required to be preserved under ap-
13 plicable State law, whichever is longer.

14 “(B) TREATMENT OF BALLOTS CAST AT
15 EARLY VOTING SITES.—

16 “(i) APPLICATION.—The requirements
17 of this subparagraph shall apply with re-
18 spect to the preliminary certification of the
19 tabulation of, and the public posting of in-
20 formation related to, ballots cast by indi-
21 viduals in person at designated sites prior
22 to the date of the election.

23 “(ii) DAILY COUNT OF EARLY BAL-
24 LOTS CAST.—At the close of business on
25 each day on which ballots described in

1 clause (i) may be cast prior to the date of
2 the election, the appropriate election offi-
3 cial at each such site shall—

4 “(I) post a preliminary count of
5 the total number of individuals who
6 appeared at the site to cast ballots,
7 determined by reference to the num-
8 ber of signatures in a sign-in book or
9 other similar independent count, and
10 the total number of ballots cast (ex-
11 cluding information on the votes re-
12 ceived by individual candidates);

13 “(II) under the observation of
14 certified tabulation observers admitted
15 to the site under subparagraph (F) (if
16 any), prepare and post a paper copy
17 of a preliminary certification of the
18 information described in subclause (I),
19 and shall ensure that each of the cer-
20 tified tabulation observers admitted to
21 the site has full access to observe the
22 process by which the preliminary cer-
23 tification is produced and a reasonable
24 period of time to review the prelimi-

1 nary certification before the site is
2 closed; and

3 “(III) display at the site during
4 regular business hours for the dura-
5 tion of the early voting period a paper
6 copy of the preliminary certification
7 prepared under subclause (II).

8 “(iii) APPLICATION OF GENERAL TAB-
9 ULATION REQUIREMENTS.—Upon the clos-
10 ing of the polls on the date of the election,
11 the appropriate election official at the site
12 at which such ballots are secured shall
13 meet the requirements of subparagraph
14 (A) with respect to such ballots (including
15 requirements relating to the role of cer-
16 tified tabulation observers) in the same
17 manner as an election official at a polling
18 place.

19 “(C) TREATMENT OF ABSENTEE BAL-
20 LOTS.—

21 “(i) DAILY COUNT OF BALLOTS
22 MAILED AND RECEIVED.—At the close of
23 each business day on which a State mails
24 or accepts absentee ballots cast in an elec-
25 tion for Federal office prior to the date of

1 the election, the appropriate election offi-
2 cial shall—

3 “(I) tabulate the total number of
4 absentee ballots mailed and received
5 by the official during that day and a
6 separate count of the number of ab-
7 sentee ballots received but rejected
8 (separated into categories of the rea-
9 sons for rejection);

10 “(II) under the observation of
11 certified tabulation observers admitted
12 under subparagraph (F) to the site at
13 which the ballots are mailed and re-
14 ceived (if any), prepare and post a
15 paper copy of a preliminary certifi-
16 cation of the information described in
17 subclause (I), and ensure that each of
18 the certified tabulation observers ad-
19 mitted to the site has full access to
20 observe the process by which the pre-
21 liminary certification is produced and
22 a reasonable period of time to review
23 the preliminary certification before the
24 site is closed; and

1 “(III) display at the site during
2 regular business hours for the dura-
3 tion of the period during which absen-
4 tee ballots are processed a paper copy
5 of the preliminary certification pre-
6 pared under subclause (II).

7 “(ii) APPLICATION OF GENERAL TAB-
8 ULATION REQUIREMENTS.—At the close of
9 business on the last day on which absentee
10 ballots are counted prior to the certifi-
11 cation of the election, the appropriate elec-
12 tion official at the site at which absentee
13 ballots are received and counted shall meet
14 the requirements of subparagraph (A) with
15 respect to such ballots (including require-
16 ments relating to the role of certified tab-
17 ulation observers) in the same manner as
18 an election official at a polling place.

19 “(D) TREATMENT OF PROVISIONAL BAL-
20 LOTS.—At the close of business on the day on
21 which the appropriate election official deter-
22 mines whether or not provisional ballots cast in
23 an election for Federal office will be counted as
24 votes in the election (as described in section
25 302(a)(4)), the official shall—

1 “(i) post a preliminary count of the
2 number of such ballots for which a deter-
3 mination was made, the number of ballots
4 counted, and the number of ballots rejected
5 (separated into categories of the reason for
6 the rejection);

7 “(ii) under the observation of certified
8 tabulation observers admitted under sub-
9 paragraph (F) to the site at which the de-
10 termination is made (if any), prepare and
11 post a paper copy of a preliminary certifi-
12 cation of the information described in
13 clause (i), and ensure that each of the cer-
14 tified tabulation observers admitted to the
15 site has full access to observe the process
16 by which the preliminary certification is
17 produced and a reasonable period of time
18 to review the preliminary certification be-
19 fore the site is closed; and

20 “(iii) display at the site during reg-
21 ular business hours for the duration of the
22 period during which provisional ballots are
23 processed a paper copy of the preliminary
24 certification prepared under clause (ii).

1 “(E) REQUIREMENTS IN CASE OF SYSTEM
2 FAILURE DURING TABULATION.—The appro-
3 priate election officials shall prepare and post
4 contingency plans which will enable the officials
5 to meet the requirements of this paragraph in
6 the event of machine failure.

7 “(F) ADMISSION OF CERTIFIED TABULA-
8 TION OBSERVERS.—

9 “(i) CERTIFIED TABULATION OB-
10 SERVER DEFINED.—In this paragraph, a
11 ‘certified tabulation observer’ is an indi-
12 vidual who is certified by an appropriate
13 election official as authorized to carry out
14 the responsibilities of a certified tabulation
15 observer under this paragraph.

16 “(ii) SELECTION.—In determining
17 which individuals to certify as tabulation
18 observers and admit to a polling place or
19 other location to serve as certified tabula-
20 tion observers with respect to an election
21 for Federal office, the election official shall
22 give preference to individuals who are af-
23 filiated with a candidate in the election, ex-
24 cept that—

1 “(I) the number of individuals
2 admitted who are affiliated with the
3 same candidate for Federal office may
4 not exceed one; and

5 “(II) the maximum number of in-
6 dividuals who may be admitted shall
7 equal the number of candidates in the
8 election plus 3, or such greater num-
9 ber as may be authorized under State
10 law.

11 “(iii) RESPONSIBILITIES OF ELECTION
12 OFFICIALS.—The appropriate election offi-
13 cial shall provide certified tabulation ob-
14 servers with assistance and materials nec-
15 essary to enable the observers to carry out
16 their responsibilities under this paragraph,
17 including—

18 “(I) providing not fewer than 2
19 hours of training;

20 “(II) providing sample prelimi-
21 nary certification reports consistent
22 with the reports which will be used on
23 the date of the election; and

24 “(III) furnishing each observer
25 with an appropriate badge or other

1 identification which may be worn
2 while the observer is exercising the ob-
3 server's function under this para-
4 graph.

5 “(iv) NO EFFECT ON ADMISSION OF
6 OTHER OBSERVERS.—Nothing in this sub-
7 paragraph may be construed to limit or
8 otherwise affect the authority of other indi-
9 viduals to enter and observe polling place
10 operations under any other law, including
11 international observers authorized under
12 any treaty or observers of the Federal Gov-
13 ernment authorized under the Voting
14 Rights Act of 1965.

15 “(G) MANDATORY HAND RECOUNT IN
16 CASE OF UNRESOLVED DISCREPANCY.—

17 “(i) RECOUNT IN THE CASE OF UNRE-
18 SOLVED DISCREPANCY REQUIRED PRIOR
19 TO CERTIFICATION OF RESULT.—If the
20 chief State election official determines, on
21 the basis of information reported under
22 subparagraph (A), that there is an unre-
23 solved discrepancy between the information
24 posted on the website of the chief State
25 election official and the preliminary certifi-

1 cation provided to a certified tabulation ob-
2 server under subparagraph (A) for any
3 precinct in which ballots are cast in an
4 election, the chief State election official
5 may not issue a final certification of the
6 results of the election until the appropriate
7 election official has completed a hand
8 count of the ballots cast in the election in
9 the precinct in which the unresolved dis-
10 crepancy exists, using the voter-marked
11 paper ballots or voter-verifiable paper
12 records of votes cast on voting machines if
13 required by Federal or State law or used
14 in the jurisdiction, or (if not so required or
15 used) the permanent paper records re-
16 quired to be produced under paragraph
17 (2).

18 “(ii) POSTING OF INFORMATION.—

19 The chief State election official shall en-
20 sure that the information obtained during
21 the hand count conducted under clause (i),
22 including the final certified vote totals,
23 shall be displayed on the official public
24 websites of the applicable local election of-
25 ficial and chief State election official using

1 the same categories and in the same man-
2 ner applicable to the information required
3 to be displayed with respect to a prelimi-
4 nary vote count under subparagraph
5 (A)(iv).

6 “(H) NO EFFECT ON OTHER TABULATION
7 REQUIREMENTS.—Nothing in this Act may be
8 construed to supersede any requirement that an
9 election official at a polling place report vote to-
10 tals to a central tabulation facility and address
11 discrepancies the official finds in the aggrega-
12 tion of those totals with other vote totals.”.

13 (b) EFFECTIVE DATE.—Section 301(d) of such Act
14 (42 U.S.C. 15481(d)) is amended by striking “January
15 1, 2006” and inserting “January 1, 2006 (or, in the case
16 of the requirements of subsection (a)(7), shall meet such
17 requirements with respect to each election for Federal of-
18 fice held after the expiration of the 1-year period which
19 begins on the date of the enactment of the Vote Tabula-
20 tion Audit Act of 2010)”.

1 **SEC. 3. PAYMENTS TO STATES TO COVER COSTS OF CAR-**
 2 **RYING OUT TABULATIONS AT CERTAIN POLL-**
 3 **ING PLACES OF VOTES CAST ON PAPER OPTI-**
 4 **CAL SCAN BALLOTS.**

5 (a) PAYMENTS.—Subtitle D of title II of the Help
 6 America Vote Act of 2002 (42 U.S.C. 15321 et seq.) is
 7 amended by adding at the end the following new part:

8 **“PART 7—PAYMENTS TO COVER COSTS OF TAB-**
 9 **ULATIONS OF VOTES CAST ON PAPER OPTI-**
 10 **CAL SCAN BALLOTS**

11 **“SEC. 297. PAYMENTS TO STATES TO COVER COSTS OF CAR-**
 12 **RYING OUT TABULATIONS AT CERTAIN POLL-**
 13 **ING PLACES OF VOTES CAST ON PAPER OPTI-**
 14 **CAL SCAN BALLOTS.**

15 “(a) PAYMENTS TO STATES.—The Commission shall
 16 make payments to reimburse eligible States for the costs
 17 incurred in obtaining and operating the equipment nec-
 18 essary to tabulate at the polling places described in sub-
 19 section (c) the votes cast on any paper optical scan ballots
 20 used at such polling places, as required under section
 21 301(a)(7)(A)(i).

22 “(b) AMOUNT OF PAYMENT.—The amount of the
 23 payment made to a State under this part shall be based
 24 upon the reasonable costs incurred by the State in obtain-
 25 ing and operating the equipment described in subsection
 26 (a), as determined on the basis of information provided

1 by the State at such time and in such form as the Com-
 2 mission may require.

3 “(c) POLLING PLACES DESCRIBED.—A polling place
 4 is described in this subsection if, with respect to the most
 5 recent elections for Federal office held in the State prior
 6 to the enactment of the Vote Tabulation Audit Act of
 7 2010—

8 “(1) the votes cast in the election were cast on
 9 paper optical scan ballots; and

10 “(2) the votes cast on such ballots were not
 11 tabulated at the polling place but at a central count
 12 optical scan facility in the State.

13 **“SEC. 297A. AUTHORIZATION OF APPROPRIATIONS.**

14 “There are authorized to be appropriated for pay-
 15 ments under this part such sums as may be necessary,
 16 to remain available until expended.”.

17 (b) CLERICAL AMENDMENT.—The table of contents
 18 of such Act is amended by adding at the end of the item
 19 relating to subtitle D of title II the following:

“PART 7—PAYMENTS TO COVER COSTS OF TABULATIONS OF VOTES CAST
 ON PAPER OPTICAL SCAN BALLOTS

“Sec. 297. Payments to States to cover costs of carrying out tabulations at cer-
 tain polling places of votes cast on paper optical scan ballots.

“Sec. 297A. Authorization of appropriations.”.

1 **SEC. 4. ADOPTION OF MODEL POSTING FORMAT BY ELEC-**
2 **TION ASSISTANCE COMMISSION.**

3 (a) ADOPTION OF MODEL FORMAT.—Part 3 of sub-
4 title B of title II of the Help America Vote Act of 2002
5 (42 U.S.C. 15361 et seq.) is amended by adding at the
6 end the following new section:

7 **“SEC. 223. MODEL FORMAT FOR POSTING TABULATION OF**
8 **VOTES AND AGGREGATE VOTE COUNTS.**

9 “(a) ADOPTION OF MODEL FORMAT.—In the same
10 manner as the Commission adopts the voluntary voting
11 system guidelines under section 222, the Commission shall
12 adopt a model format for the posting of the tabulation
13 of votes and aggregate vote counts which may be used by
14 States in meeting the requirements for the tabulation and
15 aggregation of vote counts produced by voting systems
16 under section 301(a)(7).

17 “(b) DEVELOPMENT OF PROPOSED MODEL FORMAT
18 BY DEVELOPMENT COMMITTEE.—In addition to the du-
19 ties described in section 221(b), the Development Com-
20 mittee shall develop and forward to the Executive Director
21 of the Commission a proposed model format for the Com-
22 mission to adopt under this section.”.

23 (b) CLERICAL AMENDMENT.—The table of contents
24 of such Act is amended by adding at the end of the items
25 relating to part 3 of subtitle B of title II the following
26 new item:

“Sec. 223. Model format for posting tabulation of votes and aggregate vote counts.”.

