

109TH CONGRESS
2^D SESSION

H. R. 6414

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 7, 2006

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 open 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 2006”.

1 **SEC. 2. STANDARDS FOR OPEN AND ACCURATE TABULA-**
2 **TION OF VOTES AND AGGREGATION OF VOTE**
3 **COUNTS.**

4 (a) **REQUIRING STATES TO MEET STANDARDS.—**
5 Section 301(a) of the Help America Vote Act of 2002 (42
6 U.S.C. 15481(a)) is amended by adding at the end the
7 following new paragraph:

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

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

14 “(i) Upon the closing of the polls at
15 each polling place, the appropriate election
16 official shall tabulate each of the following,
17 in the aggregate for the entire polling
18 place and also per precinct in the case of
19 a polling place serving more than one pre-
20 cinct:

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

1 “(II) The number of votes per
2 candidate (excluding over-votes).

3 “(III) The number of spoiled bal-
4 lots.

5 “(IV) The number of over-votes,
6 under-votes, and blank votes for each
7 candidate (or their equivalent).

8 “(V) The number of provisional
9 ballots cast, both on paper and by vot-
10 ing machine, including a designation
11 of which method was used.

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

18 “(VII) The total number of indi-
19 viduals who appeared at the polling
20 place to cast ballots, determined by
21 reference to the number of signatures
22 at a sign-in book or other similar
23 independent count.

24 “(VIII) The total number of vot-
25 ers who cast ballots in all elections for

1 Federal office on the ballot at the
2 polling place.

3 “(IX) The number of individuals
4 who desired to cast ballots in elections
5 for Federal office at the polling place
6 but were prohibited from casting bal-
7 lots (including provisional ballots
8 under section 302(a)) by the election
9 official.

10 “(X) Such other information as
11 the State may require.

12 “(ii) The appropriate election official
13 at the polling place shall prepare a prelimi-
14 nary certification of the vote count at the
15 polling place (as tabulated under clause
16 (i)) under the observation of the certified
17 tabulation observers admitted to the poll-
18 ing place under subparagraph (F) (if any),
19 shall announce the vote count orally, and
20 shall provide and post a paper copy of the
21 preliminary certification for the admitted
22 tabulation observers and to any election of-
23 ficial at the polling place. The election offi-
24 cial at the polling place shall ensure that
25 each of the certified tabulation observers

1 admitted to the polling place has full ac-
2 cess to observe the process by which the
3 preliminary certification is produced. Elec-
4 tion officials shall establish procedures to
5 ensure that any duplicate certificates are
6 accurate and identical.

7 “(iii) After the requirements of clause
8 (ii) are met, under the observation of the
9 certified tabulation observers admitted to
10 the polling place under subparagraph (F)
11 (if any), an appropriate election official
12 shall display at a prominent location acces-
13 sible to the public during regular business
14 hours a paper copy of the preliminary cer-
15 tification prepared under clause (ii).
16 Thereafter, an appropriate election official,
17 in the manner prescribed by applicable
18 State or local law, shall transmit the infor-
19 mation contained in such preliminary cer-
20 tification to the central vote tabulation
21 center designated for the tabulation of
22 votes by the chief State election official.

23 “(iv) As soon as practicable after in-
24 formation is entered into the central vote
25 tabulation center under clause (iii), sub-

1 paragraph (B) (with respect to early
2 votes), subparagraph (C) (with respect to
3 absentee ballots), and subparagraph (D)
4 (with respect to provisional ballots counted
5 as votes in the election), the information
6 shall be displayed on the official public
7 websites of the applicable local election of-
8 ficial and chief State election official, and
9 shall be displayed in a manner which dis-
10 plays for each voting system, together with
11 the name of the designated voting official
12 who entered the information and the date
13 and time the information was entered, each
14 of the following:

15 “(I) The information tabulated
16 under clause (i).

17 “(II) The number of early ballots
18 cast on each day of the early voting
19 period.

20 “(III) The aggregate number of
21 early votes cast for each candidate.

22 “(IV) The number of absentee
23 ballots received on each day on which
24 such ballots are permitted to be re-
25 ceived and counted under State law.

1 “(V) The aggregate number of
2 absentee votes cast for each can-
3 didate.

4 “(VI) The aggregate number of
5 provisional ballots cast.

6 “(VII) The number of provisional
7 votes cast for each candidate.

8 In no event may the information required
9 to be displayed under this clause be dis-
10 played later than noon on the day fol-
11 lowing the date of the election (or, with re-
12 spect to information on early votes, absen-
13 tee ballots, and provisional ballots, prior to
14 the closing of the polls on the date of the
15 election or later than noon on the day fol-
16 lowing the date on which the votes and bal-
17 lots are counted). All of the information re-
18 quired to be posted under this clause shall
19 be presented in a format under which any
20 individual may visit the website and view
21 and download all of the information.

22 “(v) Certified tabulation observers
23 shall be authorized to check the informa-
24 tion posted under clause (iv) and compare
25 the information with the preliminary cer-

1 tifications provided under clause (ii), sub-
2 paragraph (B) (with respect to early
3 votes), subparagraph (C) (with respect to
4 absentee ballots), and subparagraph (D)
5 (with respect to provisional ballots counted
6 as votes in the election). Each website on
7 which information is posted under clause
8 (iv) shall include information on the proce-
9 dures by which discrepancies shall be re-
10 ported to election officials. If any discrep-
11 ancy exists between the posted information
12 and the relevant preliminary certification,
13 the appropriate election official shall dis-
14 play information on the discrepancy on the
15 website on which the information is posted
16 under clause (iv) not later than 24 hours
17 after the official is made aware of the dis-
18 crepancy, and shall maintain the informa-
19 tion on the discrepancy and its resolution
20 (if applicable) on such website during the
21 entire period for which results of the elec-
22 tion are typically maintained on such
23 website.

24 “(vi) The appropriate election official
25 shall preserve archived copies of the pre-

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

12 “(B) TREATMENT OF BALLOTS CAST AT
13 EARLY VOTING SITES.—

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

21 “(ii) PUBLICATION OF SECURITY PRO-
22 CEDURES.—Prior to the commencement of
23 the period during which ballots described
24 in clause (i) may be cast, the chief State
25 election official shall post on the official’s

1 public website the procedures used to en-
2 sure that the ballots are secured prior to
3 being counted.

4 “(iii) DAILY COUNT OF EARLY BAL-
5 LOTS CAST.—At the close of business on
6 each day on which ballots described in
7 clause (i) may be cast prior to the date of
8 the election, the appropriate election offi-
9 cial at each such site shall—

10 “(I) post a preliminary count of
11 the total number of ballots cast (ex-
12 cluding information on the votes re-
13 ceived by individual candidates), a
14 separate count of the number of bal-
15 lots cast with respect to each precinct
16 served by the site, and a separate
17 count of the number of individuals
18 who desired to cast ballots at the site
19 but were prohibited from casting bal-
20 lots (including provisional ballots
21 under section 302(a)) by the election
22 official;

23 “(II) under the observation of
24 certified tabulation observers admitted
25 to the site under subparagraph (F) (if

1 any), prepare and provide a paper
2 copy of a preliminary certification of
3 the information described in subclause
4 (I);

5 “(III) under the observation of
6 certified tabulation observers admitted
7 to the site under subparagraph (F) (if
8 any), display at the site, at a promi-
9 nent location accessible to the public
10 during regular business hours, a
11 paper copy of the preliminary certifi-
12 cation prepared under subclause (II);
13 and

14 “(IV) after meeting the require-
15 ment of subclause (III), seal and se-
16 cure the ballots for transmission to
17 the central vote tabulation center des-
18 ignated to receive and tabulate votes
19 for the jurisdiction involved or for
20 storage at the site.

21 “(iv) APPLICATION OF GENERAL TAB-
22 ULATION REQUIREMENTS.—Upon the clos-
23 ing of the polls on the date of the election,
24 the appropriate election official at the site
25 at which such ballots were received or

1 stored prior to the date of the election
2 shall meet the requirements of subpara-
3 graph (A) with respect to such ballots (in-
4 cluding requirements relating to the role of
5 certified tabulation observers) in the same
6 manner as an election official at a polling
7 place.

8 “(C) TREATMENT OF ABSENTEE BAL-
9 LOTS.—

10 “(i) PUBLICATION OF SECURITY PRO-
11 CEDURES.—Prior to the first date on
12 which absentee ballots may be requested,
13 the chief State election official shall post
14 on the official’s public website the proce-
15 dures used to ensure that absentee ballots
16 cast in elections for Federal office in the
17 State are secured prior to being counted.

18 “(ii) DAILY COUNT OF BALLOTS
19 MAILED AND RECEIVED.— At the close of
20 each business day on which a State mails
21 or accepts absentee ballots cast in an elec-
22 tion for Federal office prior to the date of
23 the election, the appropriate election offi-
24 cial shall—

1 “(I) provide a preliminary count
2 of the total number of absentee ballots
3 mailed and received by the official
4 during that day, a separate count of
5 the number of absentee ballots mailed
6 and received with respect to each pre-
7 cinct under the official’s jurisdiction,
8 and a separate count of the number of
9 absentee ballots received but rejected
10 (separated into categories of the rea-
11 sons for rejection);

12 “(II) under the observation of
13 certified tabulation observers admitted
14 under subparagraph (F) to the site at
15 which the ballots are mailed and re-
16 ceived (if any), prepare and provide a
17 paper copy of a preliminary certifi-
18 cation of the information described in
19 subclause (I);

20 “(III) under the observation of
21 certified tabulation observers admitted
22 under subparagraph (F) to the site (if
23 any), display at the site, at a promi-
24 nent location accessible to the public
25 during regular business hours, a

1 paper copy of the preliminary certifi-
2 cation prepared under subclause (II);
3 and

4 “(IV) after meeting the require-
5 ment of subclause (III), seal and se-
6 cure the ballots in the manner pro-
7 vided for under applicable State law.

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

20 “(D) TREATMENT OF PROVISIONAL BAL-
21 LOTS.—

22 “(i) PUBLICATION OF SECURITY PRO-
23 CEDURES.—Prior to the first day on which
24 provisional ballots may be cast, the chief
25 State election official shall post on the offi-

1 cial’s public website the procedures used to
2 ensure that provisional ballots cast in elec-
3 tions for Federal office in the State are se-
4 cured prior to being counted.

5 “(ii) DAILY COUNT OF BALLOTS.—At
6 the close of business on the day on which
7 the appropriate election official determines
8 whether or not provisional ballots cast in
9 an election for Federal office will be count-
10 ed as votes in the election (as described in
11 section 302(a)(4)), the official shall—

12 “(I) provide a preliminary count
13 of the number of such ballots for
14 which a determination was made, the
15 number of ballots counted, the num-
16 ber of ballots rejected, and a separate
17 count of the number of individuals at
18 voting sites who desired to cast ballots
19 but were prohibited from casting pro-
20 visional ballots by the election official
21 (separated into categories of the rea-
22 son for the prohibition);

23 “(II) under the observation of
24 certified tabulation observers admitted
25 under subparagraph (F) to the site at

1 which the determination is made (if
2 any), prepare and provide a paper
3 copy of a preliminary certification of
4 the information described in subclause
5 (I); and

6 “(III) under the observation of
7 certified tabulation observers admitted
8 under subparagraph (F) to the site (if
9 any), display at the site, at a promi-
10 nent location accessible to the public
11 during regular business hours, a
12 paper copy of the preliminary certifi-
13 cation prepared under subclause (II).

14 “(E) REQUIREMENTS IN CASE OF SYSTEM
15 FAILURE DURING TABULATION.—

16 “(i) IN GENERAL.—If during the
17 course of tabulating the information re-
18 quired under this paragraph a voting sys-
19 tem fails or there is otherwise a system
20 break or error which prevents the appro-
21 priate election official from meeting the re-
22 quirements of subparagraph (A)(i), the of-
23 ficial shall—

24 “(I) under the observation of cer-
25 tified tabulation observers admitted to

1 the site under subparagraph (F) (if
2 any), seal and (in a segregated man-
3 ner) secure any ballots already count-
4 ed and any ballots yet to be counted;

5 “(II) not later than 12 hours
6 after sealing and securing the ballots,
7 repair (directly or by contract) the
8 system under the observation of such
9 observers (if any); and

10 “(III) as soon as practicable
11 after the system is repaired, resume
12 the tabulation of the information and
13 meet the other requirements of sub-
14 paragraph (A).

15 “(ii) EFFECT OF CATASTROPHIC FAIL-
16 URE.—If a voting system fails in a cata-
17 strophic manner so that it cannot be re-
18 paired within the deadline referred to in
19 clause (i)(II), the ballots cast on the sys-
20 tem shall be handled and tabulated in the
21 manner provided under applicable State
22 law.

23 “(F) ADMISSION OF CERTIFIED TABULA-
24 TION OBSERVERS.—

1 “(i) CERTIFIED TABULATION OB-
2 SERVER DEFINED.—In this paragraph, a
3 ‘certified tabulation observer’ is an indi-
4 vidual who is certified by an appropriate
5 election official as authorized to carry out
6 the responsibilities of a certified tabulation
7 observer under this paragraph.

8 “(ii) SELECTION.—In determining
9 which individuals to certify as tabulation
10 observers and admit to a polling place or
11 other location to serve as certified tabula-
12 tion observers with respect to an election
13 for Federal office, the election official shall
14 give preference to individuals who are af-
15 filiated with a candidate in the election, ex-
16 cept that—

17 “(I) the number of individuals
18 admitted who are affiliated with the
19 same candidate for Federal office may
20 not exceed one; and

21 “(II) the maximum number of in-
22 dividuals who may be admitted shall
23 equal the number of candidates in the
24 election plus 3, or such greater num-

1 ber as may be authorized under State
2 law.

3 “(iii) RESPONSIBILITIES OF ELECTION
4 OFFICIALS.—The appropriate election offi-
5 cial shall provide certified tabulation ob-
6 servers with assistance and materials nec-
7 essary to enable the observers to carry out
8 their responsibilities under this paragraph,
9 including—

10 “(I) providing not fewer than 2
11 hours of training;

12 “(II) providing sample prelimi-
13 nary certification reports consistent
14 with the reports which will be used on
15 the date of the election; and

16 “(III) furnishing each observer
17 with an appropriate badge or other
18 identification which may be worn
19 while the observer is exercising the ob-
20 server’s function under this para-
21 graph.

22 “(iv) NO EFFECT ON ADMISSION OF
23 OTHER OBSERVERS.—Nothing in this sub-
24 paragraph may be construed to limit or
25 otherwise affect the authority of other indi-

1 viduals to enter and observe polling place
2 operations under any other law, including
3 international observers authorized under
4 any treaty or observers of the Federal Gov-
5 ernment authorized under the Voting
6 Rights Act of 1965.

7 “(G) MANDATORY HAND RECOUNT IN
8 CASE OF UNRESOLVED DISCREPANCY.—

9 “(i) RECOUNT IN THE CASE OF UNRE-
10 SOLVED DISCREPANCY REQUIRED PRIOR
11 TO CERTIFICATION OF RESULT.—If the
12 chief State election official determines, on
13 the basis of information reported under
14 subparagraph (A), that there is an unre-
15 solved discrepancy between the information
16 posted on the website of the chief State
17 election official and the preliminary certifi-
18 cation provided to a certified tabulation ob-
19 server under subparagraph (A) for any
20 precinct in which ballots are cast in an
21 election, the chief State election official
22 may not issue a final certification of the
23 results of the election until the appropriate
24 election official has completed a hand
25 count of the ballots cast in the election in

1 the precinct in which the unresolved dis-
2 crepancy exists, using the voter-verified
3 paper records of votes cast on voting ma-
4 chines if required by Federal or State law
5 or used in the jurisdiction, or (if not) the
6 permanent paper records required to be
7 produced under paragraph (2).

8 “(ii) POSTING OF INFORMATION.—
9 The chief State election official shall en-
10 sure that the information obtained during
11 the hand count conducted under clause (i),
12 including the final certified vote totals,
13 shall be displayed on the official public
14 websites of the applicable local election of-
15 ficial and chief State election official using
16 the same categories and in the same man-
17 ner applicable to the information required
18 to be displayed with respect to a prelimi-
19 nary vote count under subparagraph
20 (A)(iv).

21 “(H) NO EFFECT ON OTHER TABULATION
22 REQUIREMENTS.—Nothing in this Act may be
23 construed to supersede any requirement that an
24 election official at a polling place report vote to-
25 tals to a central tabulation facility and address

1 discrepancies the official finds in the aggrega-
2 tion of those totals with other vote totals.”.

3 (b) PAYMENTS TO STATES TO COVER COSTS OF CAR-
4 RYING OUT TABULATIONS AT CERTAIN POLLING PLACES
5 OF VOTES CAST ON OPTICAL SCAN VOTING SYSTEMS.—

6 (1) PAYMENTS.—Subtitle D of title II of such
7 Act (42 U.S.C. 15321 et seq.) is amended by adding
8 at the end the following new part:

9 **“PART 7—PAYMENTS TO COVER COSTS OF TAB-**
10 **ULATIONS OF VOTES CAST ON OPTICAL**
11 **SCAN SYSTEMS**

12 **“SEC. 297. PAYMENTS TO STATES TO COVER COSTS OF CAR-**
13 **RYING OUT TABULATIONS AT CERTAIN POLL-**
14 **ING PLACES OF VOTES CAST ON OPTICAL**
15 **SCAN VOTING SYSTEMS.**

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

23 “(b) AMOUNT OF PAYMENT.—The amount of the
24 payment made to a State under this part shall be based
25 upon the reasonable costs incurred by the State in obtain-

1 ing and operating the equipment described in subsection
 2 (a), as determined on the basis of information provided
 3 by the State at such time and in such form as the Com-
 4 mission may require.

5 “(c) POLLING PLACES DESCRIBED.—A polling place
 6 is described in this subsection if, with respect to the most
 7 recent elections for Federal office held in the State prior
 8 to the enactment of the Vote Tabulation Audit Act of
 9 2006—

10 “(1) the votes cast in the election were cast on
 11 optical scan voting systems; and

12 “(2) the votes cast on such systems were not
 13 tabulated at the polling place but at a central count
 14 facility in the State.

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

16 “There are authorized to be appropriated for pay-
 17 ments under this part such sums as may be necessary for
 18 fiscal year 2008, to remain available until expended.”.

19 (2) CLERICAL AMENDMENT.—The table of con-
 20 tents of such Act is amended by adding at the end
 21 of the item relating to subtitle D of title II the fol-
 22 lowing:

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

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

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

1 (c) ADOPTION OF MODEL POSTING FORMAT BY
2 ELECTION ASSISTANCE COMMISSION.—

3 (1) ADOPTION OF MODEL FORMAT.—Part 3 of
4 subtitle B of title II of such Act (42 U.S.C. 15361
5 et seq.) is amended by adding at the end the fol-
6 lowing 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 (2) CLERICAL AMENDMENT.—The table of con-
24 tents of such Act is amended by adding at the end

1 of the items relating to part 3 of subtitle B of title
2 II the following new item:

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

3 (d) EFFECTIVE DATE.—Section 301(d) of such Act
4 (42 U.S.C. 15481(d)) is amended by striking “January
5 1, 2006” and inserting “January 1, 2006 (or, in the case
6 of the requirements of subsection (a)(7), shall meet such
7 requirements with respect to each election for Federal of-
8 fice held after November 2007)”.

○