

# HOUSE BILL 738

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EMERGENCY BILL

9lr2888

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By: **Delegate Cardin**

Introduced and read first time: February 10, 2009

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Elections – Voting System Requirements and Accommodations for Voters**  
3 **with Disabilities**

4 FOR the purpose of specifying that a voting system selected and certified by the State  
5 Board of Elections shall meet certain federal performance and test standards;  
6 specifying an alternative entity that may serve as the certification agent for  
7 testing laboratories for voting systems used in the State; altering and clarifying  
8 provisions relating to accessibility standards governing voting systems selected,  
9 certified, and implemented in the State; authorizing the State Board to certify a  
10 specified type of voting system for use by voters with disabilities; making this  
11 Act an emergency measure; and generally relating to voting system selection  
12 and certification.

13 BY repealing and reenacting, with amendments,  
14 Article – Election Law  
15 Section 9–102  
16 Annotated Code of Maryland  
17 (2003 Volume and 2008 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article – Election Law**

21 9–102.

22 (a) In this section, a “voter–verifiable paper record” includes:

23 (1) a paper ballot prepared by the voter for the purpose of being read  
24 by a precinct–based optical scanner;

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) a paper ballot prepared by the voter to be mailed to the applicable  
2 local board, whether mailed from a domestic or an overseas location; and

3 (3) a paper ballot created through the use of a ballot marking device.

4 (b) The State Board shall adopt regulations for the review, certification, and  
5 decertification of voting systems.

6 (c) The State Board shall periodically review and evaluate alternative voting  
7 systems.

8 (d) The State Board may not certify a voting system unless the State Board  
9 determines that:

10 (1) the voting system will:

11 (i) protect the secrecy of the ballot;

12 (ii) protect the security of the voting process;

13 (iii) count and record all votes accurately;

14 (iv) accommodate any ballot used under this article;

15 (v) protect all other rights of voters and candidates;

16 (vi) be capable of creating a paper record of all votes cast in  
17 order that an audit trail is available in the event of a recount, including a manual  
18 recount; and

19 (vii) **EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS**  
20 **SECTION**, provide a voter-verifiable paper record that:

21 1. is an individual document that is physically separated  
22 from any other similar document and not part of a continuous roll;

23 2. is sufficiently durable to withstand repeated handling  
24 for the purposes of mandatory random audits and recounts; and

25 3. uses ink that does not fade, smear, or otherwise  
26 degrade and obscure or obliterate the paper record over time;

27 (2) the voting system has been:

28 (i) examined by an independent testing laboratory that is  
29 approved by the U.S. Election Assistance Commission **OR THE NATIONAL**  
30 **ASSOCIATION OF STATE ELECTION DIRECTORS**; and

1 (ii) shown by the testing laboratory to meet the performance  
2 and test standards for electronic voting systems established by the Federal Election  
3 Commission or the U.S. Election Assistance Commission; and

4 (3) the public interest will be served by the certification of the voting  
5 system.

6 **(E) THE STATE BOARD MAY CERTIFY AND USE A VOTING SYSTEM THAT**  
7 **DOES NOT HAVE A VOTER-VERIFIABLE PAPER RECORD FOR THE PURPOSE OF**  
8 **PROVIDING ACCESS TO VOTERS WITH DISABILITIES.**

9 [(e)] (F) In determining whether a voting system meets the required  
10 standards, the State Board shall consider:

11 (1) the commercial availability of the system and its replacement parts  
12 and components;

13 (2) the availability of continuing service for the system;

14 (3) the cost of implementing the system;

15 (4) the efficiency of the system;

16 (5) the likelihood that the system will malfunction;

17 (6) the system's ease of understanding for the voter;

18 (7) the convenience of voting afforded by the system;

19 (8) the timeliness of the tabulation and reporting of election returns;

20 (9) the potential for an alternative means of verifying the tabulation;

21 (10) accessibility for all voters with disabilities recognized by the  
22 Americans with Disabilities Act; and

23 (11) any other factor that the State Board considers relevant.

24 [(f)] (G) A voting system selected, certified, and implemented under this  
25 section shall:

26 (1) [provide access to voters with disabilities that is equivalent to  
27 access afforded voters without disabilities without creating a segregated ballot for  
28 voters with disabilities;

1 (2) ensure the independent, private casting, inspection, verification,  
 2 and correction of secret ballots by voters with disabilities in an accessible media by  
 3 both visual and nonvisual means, including synchronized audio output and enhanced  
 4 visual display; and

5 [(3)] (2) comply with [both] the Americans with Disabilities Act, P.L.  
 6 101–336, and [the Help America Vote Act, P.L. 107–252, including] **BE SHOWN BY AN**  
 7 **INDEPENDENT TESTING LABORATORY TO MEET THE** accessibility standards  
 8 [adopted as part of the Voluntary Voting System Guidelines pursuant to the Help  
 9 America Vote Act] **FOR VOTING SYSTEMS ESTABLISHED BY THE FEDERAL**  
 10 **ELECTION COMMISSION OR THE U.S. ELECTION ASSISTANCE COMMISSION.**

11 [(g)] (H) (1) At least one voting system in each polling place on election  
 12 day shall provide access for voters with disabilities in compliance with subsection (f) of  
 13 this section.

14 (2) The State Board shall ensure that adequate backup equipment is  
 15 available and contingency plans are established to ensure compliance with paragraph  
 16 (1) of this subsection.

17 [(h)] (I) Before the selection of a voting system, the State Board shall:

18 (1) [ensure that an accessible] **VERIFY THAT AN INDEPENDENT**  
 19 **TESTING LABORATORY HAS SHOWN THAT THE** voting system conforms to the access  
 20 requirements [of the Voluntary Voting System Guidelines developed in accordance  
 21 with the Help America Vote Act in effect at the time of selection] **FOR VOTING**  
 22 **SYSTEMS ESTABLISHED BY THE FEDERAL ELECTION COMMISSION OR THE U.S.**  
 23 **ELECTION ASSISTANCE COMMISSION; and**

24 (2) conduct an accessibility and usability evaluation of the voting  
 25 system to assess its accessibility and usability by voters with disabilities, including:

26 (i) a public demonstration of the system; and

27 (ii) an evaluation by individuals representing a cross-section of  
 28 voters with disabilities.

29 [(i)] (J) (1) The State Board shall adopt regulations relating to  
 30 requirements for each voting system selected and certified under § 9–101 of this  
 31 subtitle.

32 (2) The regulations shall specify the procedures necessary to assure  
 33 that the standards of this title are maintained, including:

34 (i) a description of the voting system;

1 (ii) a public information program by the local board, at the time  
2 of introduction of a new voting system, to be directed to all voters, candidates,  
3 campaign groups, schools, and news media in the county;

4 (iii) local election officials' responsibility for management of the  
5 system;

6 (iv) the actions required to assure the security of the voting  
7 system;

8 (v) the supplies and equipment required;

9 (vi) the storage, delivery, and return of the supplies and  
10 equipment necessary for the operation of the voting system;

11 (vii) standards for training election officials in the operation and  
12 use of the voting system;

13 (viii) before each election and for all ballot styles to be used,  
14 testing by the members of the local board to ensure the accuracy of tallying,  
15 tabulation, and reporting of the vote, and observing of that testing by representatives  
16 of political parties and of candidates who are not affiliated with political parties;

17 (ix) the number of voting stations or voting booths required in  
18 each polling place, in relation to the number of registered voters assigned to the  
19 polling place;

20 (x) the practices and procedures in each polling place  
21 appropriate to the operation of the voting system;

22 (xi) assuring ballot accountability in systems using a document  
23 ballot;

24 (xii) the actions required to tabulate votes; and

25 (xiii) postelection review and audit of the system's output.

26 (3) Certification of a voting system is not effective until the  
27 regulations applicable to the voting system have been adopted.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
29 measure, is necessary for the immediate preservation of the public health or safety,  
30 has been passed by a yea and nay vote supported by three-fifths of all the members  
31 elected to each of the two Houses of the General Assembly, and shall take effect from  
32 the date it is enacted.