

HOUSE BILL 893

G1

EMERGENCY BILL
ENROLLED BILL

(91r2294)

—*Ways and Means / Education, Health, and Environmental Affairs*—

Introduced by **Delegates Hixson, Cardin, Olszewski, Rice, and ~~Ross~~ Ross, Frick, Ivey, Howard, Kaiser, Walker, and Stukes**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Election Law – Voting Systems – Requirements**

3 FOR the purpose of ~~authorizing the State Board of Elections to certify a voting system~~
4 ~~that has been examined by an independent testing laboratory approved by the~~
5 ~~National Association of State Election Directors; requiring the State Board to~~
6 ~~select and certify the voting system that best satisfies certain requirements if at~~
7 ~~the time of procurement of a voting system there are no voting systems~~
8 ~~commercially available that entirely satisfy certain requirements; specifying~~
9 ~~that certain requirements for the selection and certification of a statewide~~
10 ~~voting system are subject to certain provisions of law; requiring the State Board~~
11 ~~of Elections to take certain actions if at the time of procurement of a voting~~
12 ~~system there is not commercially available a voting system that satisfies certain~~
13 ~~requirements; requiring the State Board to select and certify a voting system~~
14 ~~that satisfies certain requirements with specified exceptions; requiring the~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber / conference committee amendments.



1 State Board to provide ~~only~~ at least one voting machine in each polling place on
 2 election day that is accessible to voters with disabilities and available for use by
 3 all voters; providing that a voting machine that is accessible to voters with
 4 disabilities is not required to provide a certain paper record; requiring the State
 5 Board to certify and deploy ~~one voting machine in each polling place that~~
 6 ~~provides a certain paper record and is shown by a certain laboratory to meet~~
 7 ~~certain accessibility requirements for voters with disabilities within a certain~~
 8 ~~time~~ a voting machine that provides a voter-verifiable paper record within a
 9 certain time after a certain determination; requiring the State Board to
 10 discontinue use, at a certain time, of any voting machines that do not provide a
 11 certain paper record ~~within a certain time~~; altering the application of a certain
 12 prior Act; requiring the State Board to notify the Department of Legislative
 13 Services no later than a certain number of days after the first election in which
 14 voting machines are used that meet certain requirements; providing for the
 15 termination of this Act a certain number of days after receipt of certain notice;
 16 making this Act an emergency measure; and generally relating to the selection
 17 and certification of voting systems.

18 BY repealing and reenacting, with amendments,
 19 Article – Election Law
 20 Section ~~9–101~~ and 9–102
 21 Annotated Code of Maryland
 22 (2003 Volume and 2008 Supplement)

23 BY repealing and reenacting, with amendments,
 24 Chapter 547 of the Acts of the General Assembly of 2007
 25 Section 2

26 BY repealing and reenacting, with amendments,
 27 Chapter 548 of the Acts of the General Assembly of 2007
 28 Section 2

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

31 **Article – Election Law**

32 9–101.

33 **(A) THE REQUIREMENTS OF THIS SECTION ARE SUBJECT TO § 9–102(J)**
 34 **OF THIS SUBTITLE.**

35 **[(a)] (B)** The State Board, in consultation with the local boards, shall select
 36 and certify a voting system for voting in polling places and a voting system for
 37 absentee voting.

1 ~~[(b)] (C)~~ The voting system selected and certified for voting in polling places
2 and the voting system selected and certified for absentee voting shall be used in all
3 counties.

4 ~~[(c)] (D)~~ The State Board shall acquire:

5 (1) the voting system selected and certified for voting in polling places;
6 and

7 (2) the voting system selected and certified for absentee voting.

8 9–102.

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

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

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

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

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

17 (c) The State Board shall periodically review and evaluate alternative voting
18 systems.

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

21 (1) the voting system will:

22 (i) protect the secrecy of the ballot;

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

24 (iii) count and record all votes accurately;

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

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

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

1 (vii) provide a voter-verifiable paper record that:

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

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

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

8 (2) the voting system has been:

9 (i) examined by an independent testing laboratory that is
10 approved by the U.S. Election Assistance Commission ~~OR THE NATIONAL~~
11 ~~ASSOCIATION OF STATE ELECTION DIRECTORS~~; and

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

15 (3) the public interest will be served by the certification of the voting
16 system.

17 (e) In determining whether a voting system meets the required standards,
18 the State Board shall consider:

19 (1) the commercial availability of the system and its replacement parts
20 and components;

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

22 (3) the cost of implementing the system;

23 (4) the efficiency of the system;

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

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

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

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

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

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

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

4 (f) A voting system selected, certified, and implemented under this section
5 shall:

6 (1) provide access to voters with disabilities that is equivalent to
7 access afforded voters without disabilities without creating a segregated ballot for
8 voters with disabilities;

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

13 (3) comply with both the Americans with Disabilities Act, P.L.
14 101–336, and the Help America Vote Act, P.L. 107–252, including accessibility
15 standards adopted as part of the Voluntary Voting System Guidelines pursuant to the
16 Help America Vote Act.

17 (g) (1) At least one voting system in each polling place on election day
18 shall provide access for voters with disabilities in compliance with subsection (f) of this
19 section.

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

23 (h) Before the selection of a voting system, the State Board shall:

24 (1) ensure that an accessible voting system conforms to the access
25 requirements of the Voluntary Voting System Guidelines developed in accordance with
26 the Help America Vote Act in effect at the time of selection; and

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

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

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

32 (i) (1) The State Board shall adopt regulations relating to requirements
33 for each voting system selected and certified under § 9–101 of this subtitle.

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

3 (i) a description of the voting system;

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

7 (iii) local election officials' responsibility for management of the
8 system;

9 (iv) the actions required to assure the security of the voting
10 system;

11 (v) the supplies and equipment required;

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

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

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

20 (ix) the number of voting stations or voting booths required in
21 each polling place, in relation to the number of registered voters assigned to the
22 polling place;

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

25 (xi) assuring ballot accountability in systems using a document
26 ballot;

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

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

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

31 ~~(J) NOTWITHSTANDING THE REQUIREMENTS OF SUBSECTIONS (F)(3)~~
32 ~~AND (H)(1) OF THIS SECTION, IF AT THE TIME OF PROCUREMENT OF A VOTING~~

~~1 SYSTEM THERE ARE NO VOTING SYSTEMS COMMERCIALY AVAILABLE THAT
2 SATISFY THE REQUIREMENTS OF SUBSECTIONS (F)(3) AND (H)(1) OF THIS
3 SECTION, THE STATE BOARD SHALL SELECT AND CERTIFY THE VOTING SYSTEM
4 THAT BEST SATISFIES THE REQUIREMENTS OF SUBSECTIONS (F)(3) AND (H)(1)
5 OF THIS SECTION.~~

6 (J) (1) THIS SUBSECTION APPLIES ONLY IF, AT THE TIME OF
7 PROCUREMENT OF A VOTING SYSTEM, THERE IS NOT A COMMERCIALY
8 AVAILABLE VOTING SYSTEM THAT SATISFIES ALL THE REQUIREMENTS OF THIS
9 SECTION.

10 (2) (I) EXCEPT AS OTHERWISE PROVIDED IN THIS
11 SUBSECTION, THE STATE BOARD SHALL SELECT, CERTIFY, AND DEPLOY A
12 VOTING SYSTEM THAT SATISFIES ALL THE REQUIREMENTS OF THIS SECTION.

13 (II) NOTWITHSTANDING SUBSECTION (D)(2)(I) OF THIS
14 SECTION, A VOTING SYSTEM SELECTED AND CERTIFIED UNDER THIS
15 SUBSECTION SHALL HAVE BEEN EXAMINED BY AN INDEPENDENT TESTING
16 LABORATORY THAT IS APPROVED BY THE U.S. ELECTION ASSISTANCE
17 COMMISSION OR THE NATIONAL ASSOCIATION OF STATE ELECTION
18 DIRECTORS.

19 (III) NOTWITHSTANDING SUBSECTIONS (F)(3) AND (H)(1) OF
20 THIS SECTION, A VOTING SYSTEM SELECTED AND CERTIFIED IS NOT REQUIRED
21 TO COMPLY WITH THE ACCESSIBILITY STANDARDS OF THE VOLUNTARY VOTING
22 SYSTEM GUIDELINES UNDER THE HELP AMERICA VOTE ACT.

23 (3) (I) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, THE
24 STATE BOARD SHALL PROVIDE ~~ONLY~~ AT LEAST ONE VOTING MACHINE IN EACH
25 POLLING PLACE ON ELECTION DAY THAT IS:

26 1. ACCESSIBLE TO VOTERS WITH DISABILITIES IN
27 ACCORDANCE WITH SUBSECTION (F)(2) OF THIS SECTION; AND

28 2. AVAILABLE FOR USE BY ALL VOTERS.

29 (II) A VOTING MACHINE UNDER THIS PARAGRAPH IS NOT
30 REQUIRED TO PROVIDE A VOTER-VERIFIABLE PAPER RECORD IN ACCORDANCE
31 WITH SUBSECTION (D)(1)(VII) OF THIS SECTION.

32 ~~(4) WITHIN 2 YEARS AFTER A VOTING MACHINE THAT PROVIDES A~~
33 ~~VOTER-VERIFIABLE PAPER RECORD HAS BEEN EXAMINED BY AN INDEPENDENT~~
34 ~~TESTING LABORATORY THAT IS APPROVED BY THE U.S. ELECTION ASSISTANCE~~
35 ~~COMMISSION AND SHOWN BY THE TESTING LABORATORY TO MEET THE~~

~~1 REQUIREMENTS OF SUBSECTIONS (F)(3) AND (H)(1) OF THIS SECTION, THE~~
~~2 STATE BOARD SHALL:~~

~~3 (I) CERTIFY AND DEPLOY ONE SUCH MACHINE IN EACH~~
~~4 POLLING PLACE; AND~~

~~5 (II) DISCONTINUE USE UNDER PARAGRAPH (3) OF THIS~~
~~6 SUBSECTION OF ANY VOTING MACHINES THAT DO NOT PROVIDE A~~
~~7 VOTER-VERIFIABLE PAPER RECORD.~~

8 (4) (I) THE STATE BOARD SHALL CERTIFY AND DEPLOY A
9 VOTING MACHINE THAT PROVIDES A VOTER-VERIFIABLE PAPER RECORD WITHIN
10 2 YEARS AFTER A DETERMINATION THAT:

11 1. THE VOTING MACHINE HAS BEEN EXAMINED BY AN
12 INDEPENDENT TESTING LABORATORY THAT IS APPROVED BY THE U.S.
13 ELECTION ASSISTANCE COMMISSION AND SHOWN BY THE TESTING
14 LABORATORY TO MEET THE REQUIREMENTS OF SUBSECTIONS (F)(3) AND (H)(1)
15 OF THIS SECTION;

16 2. THE VOTING MACHINE IS COMPATIBLE WITH THE
17 VOTING SYSTEM SELECTED AND CERTIFIED FOR VOTING IN POLLING PLACES IN
18 THE STATE; AND

19 3. THE VOTING MACHINE MEETS THE STATE
20 CERTIFICATION REQUIREMENTS UNDER THIS SECTION.

21 (II) ON CERTIFICATION AND DEPLOYMENT OF A VOTING
22 MACHINE THAT PROVIDES A VOTER-VERIFIABLE PAPER RECORD IN
23 ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE STATE BOARD
24 SHALL DISCONTINUE THE USE OF ANY VOTING MACHINE THAT DOES NOT
25 PROVIDE A VOTER-VERIFIABLE PAPER RECORD.

26 Chapter 547 of the Acts of 2007

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to
28 each election [occurring on or after January 1, 2010] BEGINNING WITH THE 2010
29 GUBERNATORIAL PRIMARY ELECTION, that is required to be conducted in
30 accordance with the Election Law Article.

31 Chapter 548 of the Acts of 2007

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to
33 each election [occurring on or after January 1, 2010] BEGINNING WITH THE 2010

1 GUBERNATORIAL PRIMARY ELECTION, that is required to be conducted in
2 accordance with the Election Law Article.

3 SECTION 2. AND BE IT FURTHER ENACTED, That:

4 (1) The State Board of Elections shall notify the Department of
5 Legislative Services no later than 15 days after the first election in which voting
6 machines are used that:

7 (i) produce a voter-verifiable paper record; and

8 (ii) were examined by an independent testing laboratory ~~this~~
9 that is approved by the U.S. Election Assistance Commission and shown by the testing
10 laboratory to meet the requirements of § 9-102(f)(3) and (h)(1) of the Election Law
11 Article.

12 (2) Five days after the Department of Legislative Services receives
13 notice under paragraph (1) of this section, this Act shall be abrogated and of no further
14 force and effect.

15 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act is an
16 emergency measure, is necessary for the immediate preservation of the public health
17 or safety, has been passed by a yea and nay vote supported by three-fifths of all the
18 members elected to each of the two Houses of the General Assembly, and shall take
19 effect from the date it is enacted.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.