

HOUSE BILL 893

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EMERGENCY BILL

9lr2294

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

Introduced and read first time: February 12, 2009

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 24, 2009

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
15 State Board to provide only one voting machine in each polling place on election
16 day that is accessible to voters with disabilities and available for use by all
17 voters; providing that a voting machine that is accessible to voters with
18 disabilities is not required to provide a certain paper record; requiring the State
19 Board to certify and deploy one voting machine in each polling place that
20 provides a certain paper record and is shown by a certain laboratory to meet
21 certain accessibility requirements for voters with disabilities within a certain
22 time; requiring the State Board to discontinue use of any voting machines that
23 do not provide a certain paper record within a certain time; altering the
24 application of a certain prior Act; requiring the State Board to notify the
25 Department of Legislative Services no later than a certain number of days after

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.



1 the first election in which voting machines are used that meet certain
 2 requirements; providing for the termination of this Act a certain number of days
 3 after receipt of certain notice; making this Act an emergency measure; and
 4 generally relating to the selection and certification of voting systems.

5 BY repealing and reenacting, with amendments,
 6 Article – Election Law
 7 Section 9–101 and 9–102
 8 Annotated Code of Maryland
 9 (2003 Volume and 2008 Supplement)

10 BY repealing and reenacting, with amendments,
 11 Chapter 547 of the Acts of the General Assembly of 2007
 12 Section 2

13 BY repealing and reenacting, with amendments,
 14 Chapter 548 of the Acts of the General Assembly of 2007
 15 Section 2

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

18 **Article – Election Law**

19 9–101.

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

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

25 **[(b)] (C) The voting system selected and certified for voting in polling places**
 26 **and the voting system selected and certified for absentee voting shall be used in all**
 27 **counties.**

28 **[(c)] (D) The State Board shall acquire:**

29 **(1) the voting system selected and certified for voting in polling places;**
 30 **and**

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

32 9–102.

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

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

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

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

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

8 (c) The State Board shall periodically review and evaluate alternative voting
9 systems.

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

12 (1) the voting system will:

13 (i) protect the secrecy of the ballot;

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

15 (iii) count and record all votes accurately;

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

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

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

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

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

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

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

28 (2) the voting system has been:

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

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

7 (3) the public interest will be served by the certification of the voting
8 system.

9 (e) In determining whether a voting system meets the required standards,
10 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) A voting system selected, certified, and implemented under this section
25 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;

29 (2) ensure the independent, private casting, inspection, verification,
30 and correction of secret ballots by voters with disabilities in an accessible media by

1 both visual and nonvisual means, including synchronized audio output and enhanced
2 visual display; and

3 (3) comply with both the Americans with Disabilities Act, P.L.
4 101–336, and the Help America Vote Act, P.L. 107–252, including accessibility
5 standards adopted as part of the Voluntary Voting System Guidelines pursuant to the
6 Help America Vote Act.

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

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

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

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

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

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

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

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

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

26 (i) a description of the voting system;

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

30 (iii) local election officials' responsibility for management of the
31 system;

32 (iv) the actions required to assure the security of the voting
33 system;

- 1 (v) the supplies and equipment required;
- 2 (vi) the storage, delivery, and return of the supplies and
3 equipment necessary for the operation of the voting system;
- 4 (vii) standards for training election officials in the operation and
5 use of the voting system;
- 6 (viii) before each election and for all ballot styles to be used,
7 testing by the members of the local board to ensure the accuracy of tallying,
8 tabulation, and reporting of the vote, and observing of that testing by representatives
9 of political parties and of candidates who are not affiliated with political parties;
- 10 (ix) the number of voting stations or voting booths required in
11 each polling place, in relation to the number of registered voters assigned to the
12 polling place;
- 13 (x) the practices and procedures in each polling place
14 appropriate to the operation of the voting system;
- 15 (xi) assuring ballot accountability in systems using a document
16 ballot;
- 17 (xii) the actions required to tabulate votes; and
- 18 (xiii) postelection review and audit of the system's output.
- 19 (3) Certification of a voting system is not effective until the
20 regulations applicable to the voting system have been adopted.

21 ~~(J) NOTWITHSTANDING THE REQUIREMENTS OF SUBSECTIONS (F)(3)~~
22 ~~AND (H)(1) OF THIS SECTION, IF AT THE TIME OF PROCUREMENT OF A VOTING~~
23 ~~SYSTEM THERE ARE NO VOTING SYSTEMS COMMERCIALY AVAILABLE THAT~~
24 ~~SATISFY THE REQUIREMENTS OF SUBSECTIONS (F)(3) AND (H)(1) OF THIS~~
25 ~~SECTION, THE STATE BOARD SHALL SELECT AND CERTIFY THE VOTING SYSTEM~~
26 ~~THAT BEST SATISFIES THE REQUIREMENTS OF SUBSECTIONS (F)(3) AND (H)(1)~~
27 ~~OF THIS SECTION.~~

28 (J) (1) THIS SUBSECTION APPLIES ONLY IF, AT THE TIME OF
29 PROCUREMENT OF A VOTING SYSTEM, THERE IS NOT A COMMERCIALY
30 AVAILABLE VOTING SYSTEM THAT SATISFIES ALL THE REQUIREMENTS OF THIS
31 SECTION.

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

1 (II) NOTWITHSTANDING SUBSECTION (D)(2)(I) OF THIS
2 SECTION, A VOTING SYSTEM SELECTED AND CERTIFIED UNDER THIS
3 SUBSECTION SHALL HAVE BEEN EXAMINED BY AN INDEPENDENT TESTING
4 LABORATORY THAT IS APPROVED BY THE U.S. ELECTION ASSISTANCE
5 COMMISSION OR THE NATIONAL ASSOCIATION OF STATE ELECTION
6 DIRECTORS.

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

11 (3) (I) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, THE
12 STATE BOARD SHALL PROVIDE ONLY ONE VOTING MACHINE IN EACH POLLING
13 PLACE ON ELECTION DAY THAT IS:

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

16 2. AVAILABLE FOR USE BY ALL VOTERS.

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

20 (4) WITHIN 2 YEARS AFTER A VOTING MACHINE THAT PROVIDES A
21 VOTER-VERIFIABLE PAPER RECORD HAS BEEN EXAMINED BY AN INDEPENDENT
22 TESTING LABORATORY THAT IS APPROVED BY THE U.S. ELECTION ASSISTANCE
23 COMMISSION AND SHOWN BY THE TESTING LABORATORY TO MEET THE
24 REQUIREMENTS OF SUBSECTIONS (F)(3) AND (H)(1) OF THIS SECTION, THE
25 STATE BOARD SHALL:

26 (I) CERTIFY AND DEPLOY ONE SUCH MACHINE IN EACH
27 POLLING PLACE; AND

28 (II) DISCONTINUE USE UNDER PARAGRAPH (3) OF THIS
29 SUBSECTION OF ANY VOTING MACHINES THAT DO NOT PROVIDE A
30 VOTER-VERIFIABLE PAPER RECORD.

31 Chapter 547 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 **Chapter 548 of the Acts of 2007**

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

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

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

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

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

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.