

SENATE BILL 421

B1, G1, L6
SB 970/09 – EHE

EMERGENCY BILL

01r2307
CF 01r2507

By: **Senator Colburn**

Introduced and read first time: January 29, 2010

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Election Law – Delay in Replacement of Voting Systems**

3 FOR the purpose of altering the date for the replacement of the State’s
4 direct–recording electronic (DRE) touchscreen voting system with a certain
5 voter–verified paper record voting system; requiring the State to continue to use
6 the touchscreen voting system for certain elections until the later of the date
7 when the State concludes payment for the touchscreen voting system or a
8 certain other date; altering certain provisions relating to the certification of
9 voting systems; providing for the application of certain provisions; repealing
10 provisions of uncodified law relating to the application of a certain prior Act;
11 making this Act an emergency measure; and generally relating to the
12 replacement of the State’s direct–recording electronic (DRE) touchscreen voting
13 system.

14 BY repealing and reenacting, with amendments,
15 Article – Election Law
16 Section 9–102
17 Annotated Code of Maryland
18 (2003 Volume and 2009 Supplement)

19 BY repealing
20 Chapter 547 of the Acts of the General Assembly of 2007
21 Section 2

22 BY repealing
23 Chapter 548 of the Acts of the General Assembly of 2007
24 Section 2

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1

Article – Election Law

2 9–102.

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

4 (1) a paper ballot prepared by the voter for the purpose of being read
5 by a precinct–based optical scanner;6 (2) a paper ballot prepared by the voter to be mailed to the applicable
7 local board, whether mailed from a domestic or an overseas location; and

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

9 **(B) AS TO PROVISIONS UNDER THIS SECTION RELATING TO A VOTING**
10 **SYSTEM THAT INCLUDES A VOTER–VERIFIABLE PAPER RECORD THAT IS**
11 **SELECTED, CERTIFIED, AND IMPLEMENTED BY THE STATE BOARD, THE**
12 **PROVISIONS SHALL APPLY TO EACH STATEWIDE ELECTION THAT IS REQUIRED**
13 **TO BE CONDUCTED IN ACCORDANCE WITH THIS ARTICLE OCCURRING ON OR**
14 **AFTER THE LATER OF:**

15 **(1) THE DATE OF THE FINAL PAYMENT UNDER THE CAPITAL**
16 **LEASE CONTRACT EXECUTED BY THE STATE IN JANUARY 2002 TO PURCHASE**
17 **THE DIRECT–RECORDING ELECTRONIC (DRE) TOUCHSCREEN VOTING SYSTEM**
18 **USED IN POLLING PLACES IN THE STATE; OR**

19 **(2) JANUARY 1, 2016.**20 **[(b)] (C)** The State Board shall adopt regulations for the review,
21 certification, and decertification of voting systems.22 **[(c)] (D)** The State Board shall periodically review and evaluate alternative
23 voting systems.24 **[(d)] (E)** The State Board may not certify a voting system unless the State
25 Board determines that:

26 (1) the voting system will:

27 (i) protect the secrecy of the ballot;

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

29 (iii) count and record all votes accurately;

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

- 1 (v) protect all other rights of voters and candidates;
- 2 (vi) be capable of creating a paper record of all votes cast in
3 order that an audit trail is available in the event of a recount, including a manual
4 recount; and
- 5 (vii) provide a voter-verifiable paper record that:
- 6 1. is an individual document that is physically separated
7 from any other similar document and not part of a continuous roll;
- 8 2. is sufficiently durable to withstand repeated handling
9 for the purposes of mandatory random audits and recounts; and
- 10 3. uses ink that does not fade, smear, or otherwise
11 degrade and obscure or obliterate the paper record over time;
- 12 (2) the voting system has been:
- 13 (i) examined by an independent testing laboratory that is
14 approved by the U.S. Election Assistance Commission; and
- 15 (ii) shown by the testing laboratory to meet the performance
16 and test standards for electronic voting systems established by the Federal Election
17 Commission or the U.S. Election Assistance Commission; and
- 18 (3) the public interest will be served by the certification of the voting
19 system.
- 20 **[(e)] (F)** In determining whether a voting system meets the required
21 standards, the State Board shall consider:
- 22 (1) the commercial availability of the system and its replacement parts
23 and components;
- 24 (2) the availability of continuing service for the system;
- 25 (3) the cost of implementing the system;
- 26 (4) the efficiency of the system;
- 27 (5) the likelihood that the system will malfunction;
- 28 (6) the system's ease of understanding for the voter;
- 29 (7) the convenience of voting afforded by the system;

- 1 (8) the timeliness of the tabulation and reporting of election returns;
- 2 (9) the potential for an alternative means of verifying the tabulation;
- 3 (10) accessibility for all voters with disabilities recognized by the
4 Americans with Disabilities Act; and
- 5 (11) any other factor that the State Board considers relevant.

6 **[(f)] (G)** A voting system selected, certified, and implemented under this
7 section shall:

- 8 (1) provide access to voters with disabilities that is equivalent to
9 access afforded voters without disabilities without creating a segregated ballot for
10 voters with disabilities;
- 11 (2) ensure the independent, private casting, inspection, verification,
12 and correction of secret ballots by voters with disabilities in an accessible media by
13 both visual and nonvisual means, including synchronized audio output and enhanced
14 visual display; and
- 15 (3) comply with both the Americans with Disabilities Act, P.L.
16 101–336, and the Help America Vote Act, P.L. 107–252, including accessibility
17 standards adopted as part of the Voluntary Voting System Guidelines pursuant to the
18 Help America Vote Act.

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

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

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

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

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

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

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

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

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

8 (i) a description of the voting system;

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

12 (iii) local election officials' responsibility for management of the
13 system;

14 (iv) the actions required to assure the security of the voting
15 system;

16 (v) the supplies and equipment required;

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

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

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

25 (ix) the number of voting stations or voting booths required in
26 each polling place, in relation to the number of registered voters assigned to the
27 polling place;

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

30 (xi) assuring ballot accountability in systems using a document
31 ballot;

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

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

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

4 ~~[(j)]~~ **(K)** (1) This subsection applies only if, at the time of procurement of
5 a voting system, there is not a commercially available voting system that satisfies all
6 the requirements of this section.

7 (2) (i) Except as otherwise provided in this subsection, the State
8 Board shall select, certify, and deploy a voting system that satisfies all the
9 requirements of this section.

10 (ii) Notwithstanding subsection ~~[(d)(2)(i)]~~ **(E)(2)(I)** of this
11 section, a voting system selected and certified under this subsection shall have been
12 examined by an independent testing laboratory that is approved by the U.S. Election
13 Assistance Commission or the National Association of State Election Directors.

14 (iii) Notwithstanding subsections ~~[(f)(3)]~~ **(G)(3)** and ~~[(h)(1)]~~
15 **(I)(1)** of this section, a voting system selected and certified is not required to comply
16 with the accessibility standards of the Voluntary Voting System Guidelines under the
17 Help America Vote Act.

18 (3) (i) Subject to paragraph (4) of this subsection, the State Board
19 shall provide at least one voting machine in each polling place on election day that is:

20 1. accessible to voters with disabilities in accordance
21 with subsection ~~[(f)(2)]~~ **(G)(2)** of this section; and

22 2. available for use by all voters.

23 (ii) A voting machine under this paragraph is not required to
24 provide a voter-verifiable paper record in accordance with subsection ~~[(d)(1)(vii)]~~
25 **(E)(1)(VII)** of this section.

26 (4) (i) The State Board shall certify and deploy a voting machine
27 that provides a voter-verifiable paper record within 2 years after a determination
28 that:

29 1. the voting machine has been examined by an
30 independent testing laboratory that is approved by the U.S. Election Assistance
31 Commission and shown by the testing laboratory to meet the requirements of
32 subsections ~~[(f)(3)]~~ **(G)(3)** and ~~[(h)(1)]~~ **(I)(1)** of this section;

33 2. the voting machine is compatible with the voting
34 system selected and certified for voting in polling places in the State; and

1 3. the voting machine meets the State certification
2 requirements under this section.

3 (ii) On certification and deployment of a voting machine that
4 provides a voter-verifiable paper record in accordance with subparagraph (i) of this
5 paragraph, the State Board shall discontinue the use of any voting machine that does
6 not provide a voter-verifiable paper record.

7 **Chapter 547 of the Acts of 2007**

8 [SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to
9 each election occurring on or after January 1, 2010, that is required to be conducted in
10 accordance with the Election Law Article.]

11 **Chapter 548 of the Acts of 2007**

12 [SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to
13 each election occurring on or after January 1, 2010, that is required to be conducted in
14 accordance with the Election Law Article.]

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