

By: West, Royce

S.B. No. 540

A BILL TO BE ENTITLED

AN ACT

relating to the accuracy, security, and reliability of certain electronic voting systems.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 61.012(a), Election Code, is amended to read as follows:

(a) Each [~~Not later than January 1, 2006, each~~] polling place must provide at least one voting station that:

(1) complies with Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Section 794) and its subsequent amendments and Title II of the federal Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) and its subsequent amendments; and

(2) provides a practical and effective means for voters with physical disabilities to cast a secret ballot, including a provisional vote under Section 63.011.

SECTION 2. Chapter 129, Election Code, is amended to read as follows:

CHAPTER 129. DIRECT RECORDING ELECTRONIC VOTING MACHINES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 129.001. APPLICABILITY. (a) This chapter applies only to a voting system that uses direct recording electronic voting machines.

(b) To the extent possible, the procedures applicable to an

1 electronic voting system under Chapter 127 are applicable to a
2 voting system under this chapter.

3 Sec. 129.002. GENERAL [~~CERTAIN DIRECT RECORDING~~
4 ~~ELECTRONIC VOTING MACHINE~~] PROCEDURES. (a) [~~As part of the testing~~
5 ~~of the direct recording electronic voting machine equipment before~~
6 ~~its use in a particular election, the general custodian of election~~
7 ~~records shall include a specific test of each machine's logic and~~
8 ~~accuracy functions to ensure that the machine properly records,~~
9 ~~counts, and tabulates the votes.~~

10 [(b)] Each direct recording electronic voting machine must
11 provide the voter with a screen in summary format of the voter's
12 choices for the voter to review before the vote is actually cast.

13 (b) [(c)] During the early voting period, the early voting
14 clerk shall conduct a daily audit of the direct recording
15 electronic voting machines used in the election to ensure proper
16 correspondence among the numbers of ballots provided on the
17 machines, names on the poll list, and ballots cast on the machines.

18 (c) [(d)] ~~The general custodian of election records shall~~
19 ~~conduct a recount sufficient to confirm the accuracy of the vote~~
20 ~~totals in an election in which direct recording electronic voting~~
21 ~~machines are used for the first time.~~

22 [(e)] The secretary of state shall prescribe any procedures
23 necessary to implement this chapter [~~section~~] and to ensure the
24 orderly and proper administration of elections using direct
25 recording electronic voting machines.

26 Sec. 129.003. PROVISIONAL VOTING. Provisional votes may be
27 cast on a direct recording electronic voting machine only if the:

1 (1) voting system segregates provisional votes from
2 other votes on the precinct returns;

3 (2) precinct returns indicate the number of
4 provisional ballots cast but do not include actual provisional
5 votes in the unofficial totals from the precinct;

6 (3) central counting station reports indicate the
7 number of provisional ballots cast but do not include the actual
8 provisional votes in the unofficial totals; and

9 (4) voting system provides a method for the cast
10 provisional ballots to be accepted and added to the election
11 results by the early voting ballot board or central counting
12 station personnel.

13 Sec. 129.004. DEFINITION. In this chapter, "electronic
14 information storage medium" means any device that is used within a
15 voting system to temporarily store voting information specific to a
16 particular election.

17 [Sections 129.005-129.020 reserved for expansion]

18 SUBCHAPTER B. PRE-ELECTION ACCEPTANCE AND

19 TESTING OF VOTING SYSTEM

20 Sec. 129.021. ACCEPTANCE TESTING. Immediately after
21 receiving a voting system from a vendor, the general custodian of
22 election records shall:

23 (1) verify that the model number or name of the system
24 is the same as ordered;

25 (2) verify that the system delivered is certified by
26 the secretary of state;

27 (3) verify that the appropriate software is installed

1 on the system;

2 (4) perform a hardware diagnostic test on the system
3 as provided by Section 129.022(b);

4 (5) perform a logic and accuracy test on the system as
5 provided by Section 129.023; and

6 (6) perform any additional test that the secretary of
7 state may prescribe.

8 Sec. 129.022. HARDWARE DIAGNOSTIC TEST. (a) The general
9 custodian of election records shall conduct a successful hardware
10 diagnostic test before a voting system is used in an election.

11 (b) The hardware diagnostic test must:

12 (1) ensure that each part of the system functions
13 properly, including:

14 (A) input and output devices;

15 (B) communications ports;

16 (C) printers;

17 (D) program configurations;

18 (E) modems; and

19 (F) screen displays; and

20 (2) determine that each part of the system is adjusted
21 to ensure that:

22 (A) the date and time on the system are accurate;

23 (B) the system is properly calibrated;

24 (C) each machine is cleared of votes;

25 (D) the system is configured for the current
26 election; and

27 (E) vendor-supplied passwords or control keys

1 are changed from those originally supplied by the vendor.

2 Sec. 129.023. LOGIC AND ACCURACY TEST. (a) The general
3 custodian of election records shall create a testing board
4 consisting of at least two persons. The general custodian of
5 election records shall make every reasonable effort to ensure that
6 the testing board consists of at least one person from each
7 political party that holds a primary election.

8 (b) Not later than 48 hours before voting begins on a voting
9 system, the general custodian of election records shall conduct a
10 logic and accuracy test. Public notice of the test must be
11 published at least 48 hours before the test begins, and the test
12 must be open to the public.

13 (c) The general custodian of election records shall adopt
14 procedures for testing that:

15 (1) direct the testing board to cast votes;

16 (2) verify that each contest position on the ballot
17 can be voted and is accurately counted for each precinct and ballot
18 style;

19 (3) include overvotes and undervotes for each race, if
20 applicable to the system being tested;

21 (4) include straight-party votes and crossover votes;

22 (5) include write-in votes, when applicable to the
23 election;

24 (6) include provisional votes, if applicable to the
25 system being tested;

26 (7) calculate the expected results from the test
27 ballots;

1 (8) allow the testing board to witness the programming
2 of electronic information storage media necessary to test specific
3 precincts;

4 (9) ensure that each voting machine has any public
5 counter reset to zero and presented to the testing board for
6 verification before testing;

7 (10) require two-person teams from the testing board
8 to cast and verify the votes;

9 (11) require that, for each feature of the system that
10 allows disabled voters to cast a ballot, at least one vote be cast
11 and verified by a two-person testing board team using that feature;
12 and

13 (12) require that, when all votes are cast, the
14 general custodian of election records and the testing board observe
15 the tabulation of all ballots and compare the actual results to the
16 expected results.

17 (d) To provide a full and accurate account of the condition
18 of a given voting machine, the testing board and the general
19 custodian of election records shall:

20 (1) sign a written statement attesting to:

21 (A) the qualification of each direct recording
22 electronic voting machine that was successfully tested; and

23 (B) any problems discovered; and

24 (2) provide any other documentation as necessary.

25 (e) On completing the testing, the testing board shall
26 witness and document all steps taken to reset, seal, and secure any
27 equipment or test materials, as appropriate.

1 Sec. 129.024. SECURITY OF TEST MATERIALS. (a) On
2 completing each test, the general custodian of election records
3 shall place the test materials in a container provided for that
4 purpose and seal the container in a manner that prevents opening
5 without breaking the seal. The general custodian of election
6 records and at least two members of the testing board shall sign the
7 seal.

8 (b) The test materials shall remain sealed for the period
9 for preserving the precinct election records.

10 (c) The container may not be unsealed unless the contents
11 are necessary to conduct a test under this subchapter or a criminal
12 investigation, election contest, or other official proceeding
13 under this code. If the container is unsealed, the authority in
14 charge of the proceeding shall reseal the contents when not in use.

15 [Sections 129.025-129.050 reserved for expansion]

16 SUBCHAPTER C. VOTING SYSTEM SECURITY

17 Sec. 129.051. PRE-ELECTION SECURITY PROCEDURE. (a) The
18 general custodian of election records shall create and maintain an
19 inventory of all electronic information storage media.

20 (b) The general custodian of election records shall develop
21 a procedure for tracking the custody of each electronic information
22 storage medium from its storage location, through election coding
23 and the election process, to its final post-election disposition
24 and return to storage. The chain of custody must require two or more
25 individuals to perform a check and verification check whenever a
26 transfer of custody occurs.

27 (c) The general custodian of election records shall

1 establish a secured location for storing electronic information
2 storage media when not in use, coding a medium for an election,
3 transferring and installing the medium into voting system
4 equipment, and storing voting system equipment after election
5 parameters are loaded.

6 (d) An election information storage medium shall be kept in
7 the presence of an election official or in a secured location once
8 the medium has been coded for an election.

9 (e) The general custodian of election records shall create a
10 procedure for tracking the custody of voting system equipment once
11 election parameters are loaded.

12 (f) The general custodian of election records shall create a
13 recovery plan to be followed if a breach in security procedures is
14 indicated. This plan must include immediately notifying the
15 secretary of state.

16 Sec. 129.052. TRANSPORT OF VOTING SYSTEM EQUIPMENT. (a)
17 The general custodian of election records shall adopt procedures
18 for securely storing and transporting voting system equipment. The
19 procedures shall include provisions for locations outside the
20 direct control of the general custodian of election records,
21 including overnight storage at a polling location. Procedures
22 relating to the chain of custody must require two or more
23 individuals to perform a check and verification check whenever a
24 transfer of custody occurs.

25 (b) The general custodian of election records shall create a
26 recovery plan to be followed if a breach in security procedures is
27 indicated. This plan must include immediately notifying the

1 secretary of state.

2 (c) The general custodian of election records shall provide
3 a training plan for relevant election officials, staff, and
4 temporary workers that addresses the procedures authorized under
5 this section.

6 Sec. 129.053. ACCESS TO VOTING SYSTEM EQUIPMENT. The
7 general custodian of election records shall secure access control
8 keys or passwords to voting system equipment. Use of access control
9 keys or passwords must be witnessed by one or more individuals
10 authorized to use that information. The use of an access control
11 key or password must be documented and witnessed in a log dedicated
12 for that purpose.

13 Sec. 129.054. NETWORK CONNECTIONS AND WIRELESS TECHNOLOGY.
14 (a) A voting system may not be connected to any external
15 communications network, including the Internet.

16 (b) A voting system may not have the capability of
17 permitting wireless communication.

18 Sec. 129.055. SOFTWARE. The sole purpose of voting system
19 equipment is the conduct of an election, and only software
20 certified by the secretary of state and necessary for an election
21 may be loaded on the equipment.

22 Sec. 129.056. PLAN FOR MACHINE FAILURE. The general
23 custodian of election records shall create a contingency plan for
24 addressing direct recording electronic voting machine failure.
25 This plan must include the timely notification of the secretary of
26 state.

27 Sec. 129.057. USE OF MACHINE IN EARLY VOTING. A direct

1 recording electronic voting machine deployed for early voting may
2 not be deployed on election day.

3 SECTION 3. (a) Except as provided by Subsection (b) of
4 this section, this Act takes effect September 1, 2007.

5 (b) Section 1 of this Act takes effect January 1, 2008.