

By: Leibowitz

H.B. No. 638

A BILL TO BE ENTITLED

AN ACT

relating to the use of direct recording electronic voting machines.

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

SECTION 1. Chapter 129, Election Code, is amended by adding Sections 129.002 and 129.003 to read as follows:

Sec. 129.002. PAPER AUDIT TRAIL REQUIRED. (a) Except as provided by Subsection (e), a voting system that consists of direct recording electronic voting machines may not be used in an election unless the system:

(1) has:

(A) been certified or otherwise approved by means of qualification testing by a nationally recognized test laboratory; and

(B) met or exceeded the minimum requirements contained in "Performance and Test Standards for Punch Card, Mark Sense, and Direct Recording Electronic Voting Systems" or a successor voluntary standards document developed and adopted by the Federal Election Commission, the Election Assistance Commission, or the National Institute of Standards and Technology; and

(2) creates a contemporaneous auditable paper record copy of each electronic ballot that allows a voter to confirm the choices the voter made through both a visual and a nonvisual method, such as through an audio component, before the voter casts the ballot.

1 (b) A voter must be allowed to privately and independently
2 view the paper record copy required under Subsection (a)(2) without
3 being allowed to handle the copy. Once the voter has confirmed that
4 the paper record copy corresponds to the vote the voter has
5 indicated electronically, the vote may be recorded electronically
6 and the paper record copy must be deposited in a secure storage
7 container. If the voter finds that the paper record copy does not
8 correspond to the voter's choices indicated electronically, the
9 system must:

10 (1) invalidate or otherwise spoil the paper record
11 copy;

12 (2) allow the voter to review the choices the voter
13 made electronically; and

14 (3) generate a new paper record copy for the voter to
15 review as provided by this subsection.

16 (c) The paper record copy must:

17 (1) indicate the voter's choice on each office or
18 measure for which the voter cast a vote and indicate the offices and
19 measures for which the voter did not cast a vote;

20 (2) be printed in the same language that the voter used
21 to cast the voter's electronic vote; and

22 (3) be designed to be read electronically.

23 (d) Except for a recount under Title 13, the electronic vote
24 is the official record of the ballot. For a recount of ballots cast
25 on a system involving direct recording electronic voting machines,
26 the paper record copy is the official record of the vote cast.

27 (e) A system involving direct recording electronic voting

1 machines that was acquired before January 1, 2010, may be used in an
2 election without meeting the requirements of this section only if:

3 (1) a voter has the option of casting a paper ballot
4 instead of using the machine;

5 (2) a permanent record of each ballot is created at the
6 time the ballot is cast or during the local canvass of the votes;

7 (3) the system is subject to parallel monitoring; and

8 (4) at least 46 days before the date the system is to
9 be used for voting, the authority responsible for holding the
10 election submits a technical security plan for the system to the
11 secretary of state.

12 (f) The record created under Subsection (e)(2) may be in a
13 paper format or be an electronically recorded image.

14 Sec. 129.003. REQUIREMENTS FOR SYSTEM USING DIRECT
15 RECORDING ELECTRONIC VOTING MACHINES. (a) On request of the
16 secretary of state, the authority adopting a system that uses
17 direct recording electronic voting machines must provide:

18 (1) the source code for any software and firmware used
19 as part of the system;

20 (2) all documents relating to the federal
21 qualification process; and

22 (3) complete documentation of all hardware, software,
23 and firmware components, including detailed change logs, and
24 documentation regarding the development process.

25 (b) Not later than the 90th day before the date a system
26 using direct recording electronic voting machines will be used in
27 an election, the authority responsible for holding the election

1 shall submit to the secretary of state a physical security plan for
2 the system.

3 (c) Not later than the 46th day before the date a system
4 using direct recording electronic voting machines will be used in
5 an election, the authority responsible for holding the election
6 shall submit to the secretary of state:

7 (1) all changes or modifications to the system that
8 might impair the accuracy and efficiency of the system, unless the
9 secretary of state specifically provides otherwise;

10 (2) a training plan for election officers at each
11 polling place; and

12 (3) a communication plan explaining the manner in
13 which election officers at each polling place will communicate on
14 election day.

15 (d) A component of a system that uses direct recording
16 electronic voting machines may not:

17 (1) transmit or receive official election results
18 through an exterior communication network;

19 (2) permit wireless communication to be transmitted or
20 received; or

21 (3) be connected to the Internet.

22 (e) A provisional vote may not be cast on a direct recording
23 electronic voting machine.

24 (f) A disability access device must be connected to a direct
25 recording electronic voting machine before the machine is used for
26 voting.

27 (g) At each polling place at which a direct recording

1 electronic voting machine is used for voting, postings must
2 indicate the penalties for tampering with the machines in each
3 language used at that polling place for the ballot.

4 SECTION 2. This Act takes effect January 1, 2010.