

By: Shapleigh

S.B. No. 245

A BILL TO BE ENTITLED

AN ACT

relating to the use of direct recording electronic voting systems.

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

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

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

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

(b) [(c)] During the early voting period, the early voting

1 clerk shall conduct a daily audit of the direct recording
2 electronic voting machines used in the election to ensure proper
3 correspondence among the numbers of ballots provided on the
4 machines, names on the poll list, and ballots cast on the machines.

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

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

13 (d) A provisional vote may not be cast on a direct recording
14 electronic voting machine.

15 Sec. 129.003. DEFINITION. In this chapter, "electronic
16 information storage medium" means any device that is used within a
17 voting system to temporarily store voting information specific to a
18 particular election.

19 Sec. 129.004. PAPER AUDIT TRAIL REQUIRED. (a) Except as
20 provided by Subsection (e), a voting system that consists of direct
21 recording electronic voting machines may not be used in an election
22 unless the system:

23 (1) has:

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

27 (B) met or exceeded the minimum requirements

1 contained in "Performance and Test Standards for Punch Card, Mark
2 Sense, and Direct Recording Electronic Voting Systems" or a
3 successor voluntary standards document developed and adopted by the
4 Federal Election Commission, the Election Assistance Commission,
5 or the National Institute of Standards and Technology; and

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

11 (b) A voter must be allowed to privately and independently
12 view the paper record copy required under Subsection (a)(2) without
13 being allowed to handle the copy. Once the voter has confirmed that
14 the paper record copy corresponds to the vote the voter has
15 indicated electronically, the vote may be recorded electronically
16 and the paper record copy must be deposited in a secure storage
17 container. If the voter finds that the paper record copy does not
18 correspond to the voter's choices indicated electronically, the
19 system must:

20 (1) invalidate or otherwise spoil the paper record
21 copy;

22 (2) allow the voter to review the choices the voter
23 made electronically; and

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

26 (c) The paper record copy must:

27 (1) indicate the voter's choice on each office or

1 measure for which the voter cast a vote and indicate the offices and
2 measures for which the voter did not cast a vote;

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

5 (3) be designed to be read electronically.

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

10 (e) A system involving direct recording electronic voting
11 machines that was acquired before January 1, 2010, may be used in an
12 election without meeting the requirements of this section only if:

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

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

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

18 (4) at least 46 days before the date the system is to
19 be used for voting, the authority responsible for holding the
20 election submits a technical security plan for the system to the
21 secretary of state.

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

24 [Sections 129.005-129.020 reserved for expansion]

25 SUBCHAPTER B. PRE-ELECTION ACCEPTANCE AND

26 TESTING OF VOTING SYSTEM

27 Sec. 129.021. REQUIREMENTS FOR SYSTEM USING DIRECT

1 RECORDING ELECTRONIC VOTING MACHINES. On request of the secretary
2 of state, the authority adopting a system that uses direct
3 recording electronic voting machines must provide:

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

6 (2) all documents relating to the federal
7 qualification process; and

8 (3) complete documentation of all hardware, software,
9 and firmware components, including detailed change logs, and
10 documentation regarding the development process.

11 Sec. 129.022. ACCEPTANCE TESTING. Immediately after
12 receiving a voting system from a vendor, the general custodian of
13 election records shall:

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

16 (2) verify that the system delivered is certified by
17 the secretary of state;

18 (3) verify that the appropriate software is installed
19 on the system;

20 (4) perform a hardware diagnostic test on the system
21 as provided by Section 129.023(b);

22 (5) perform a logic and accuracy test on the system as
23 provided by Section 129.024; and

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

26 Sec. 129.023. HARDWARE DIAGNOSTIC TEST. (a) The general
27 custodian of election records shall conduct a successful hardware

1 diagnostic test before a voting system is used in an election.

2 (b) The hardware diagnostic test must:

3 (1) ensure that each part of the system functions
4 properly, including:

5 (A) input and output devices;

6 (B) communications ports;

7 (C) printers;

8 (D) program configurations;

9 (E) modems; and

10 (F) screen displays; and

11 (2) determine that each part of the system is adjusted
12 to ensure that:

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

14 (B) the system is properly calibrated;

15 (C) each machine is cleared of votes;

16 (D) the system is configured for the current
17 election; and

18 (E) vendor-supplied passwords or control keys
19 are changed from those originally supplied by the vendor.

20 Sec. 129.024. LOGIC AND ACCURACY TEST. (a) The general
21 custodian of election records shall create a testing board
22 consisting of at least two persons. The general custodian of
23 election records shall make every reasonable effort to ensure that
24 the testing board consists of at least one person from each
25 political party that holds a primary election.

26 (b) Not later than 48 hours before voting begins on a voting
27 system, the general custodian of election records shall conduct a

1 logic and accuracy test. Public notice of the test must be
2 published at least 48 hours before the test begins, and the test
3 must be open to the public.

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

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

7 (2) verify that each contest position on the ballot
8 can be voted and is accurately counted for each precinct and ballot
9 style;

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

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

13 (5) include write-in votes, when applicable to the
14 election;

15 (6) include provisional votes, if applicable to the
16 system being tested;

17 (7) calculate the expected results from the test
18 ballots;

19 (8) allow the testing board to witness the programming
20 of electronic information storage media necessary to test specific
21 precincts;

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

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

27 (11) require that, for each feature of the system that

1 allows disabled voters to cast a ballot, at least one vote be cast
2 and verified by a two-person testing board team using that feature;
3 and

4 (12) require that, when all votes are cast, the
5 general custodian of election records and the testing board observe
6 the tabulation of all ballots and compare the actual results to the
7 expected results.

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

11 (1) sign a written statement attesting to:

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

14 (B) any problems discovered; and

15 (2) provide any other documentation as necessary.

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

19 Sec. 129.025. SECURITY OF TEST MATERIALS. (a) On
20 completing each test, the general custodian of election records
21 shall place the test materials in a container provided for that
22 purpose and seal the container in a manner that prevents opening
23 without breaking the seal. The general custodian of election
24 records and at least two members of the testing board shall sign the
25 seal.

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

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

6 [Sections 129.026-129.050 reserved for expansion]

7 SUBCHAPTER C. VOTING SYSTEM SECURITY

8 Sec. 129.051. SECURITY PLAN. Not later than the 90th day
9 before the date a system using direct recording electronic voting
10 machines will be used in an election, the authority responsible for
11 holding the election shall submit to the secretary of state a
12 physical security plan for the system.

13 Sec. 129.052. PRE-ELECTION SECURITY PROCEDURE. (a) The
14 general custodian of election records shall create and maintain an
15 inventory of all electronic information storage media.

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

23 (c) The general custodian of election records shall
24 establish a secured location for storing electronic information
25 storage media when not in use, coding a medium for an election,
26 transferring and installing the medium into voting system
27 equipment, and storing voting system equipment after election

1 parameters are loaded.

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

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

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

12 (g) Not later than the 46th day before the date a system
13 using direct recording electronic voting machines will be used in
14 an election, the authority responsible for holding the election
15 shall submit to the secretary of state:

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

19 (2) a training plan for election officers at each
20 polling place; and

21 (3) a communication plan explaining the manner in
22 which election officers at each polling place will communicate on
23 election day.

24 Sec. 129.053. TRANSPORT OF VOTING SYSTEM EQUIPMENT. (a)
25 The general custodian of election records shall adopt procedures
26 for securely storing and transporting voting system equipment. The
27 procedures shall include provisions for locations outside the

1 direct control of the general custodian of election records,
2 including overnight storage at a polling location. Procedures
3 relating to the chain of custody must require two or more
4 individuals to perform a check and verification check whenever a
5 transfer of custody occurs.

6 (b) The general custodian of election records shall create a
7 recovery plan to be followed if a breach in security procedures is
8 indicated. This plan must include immediately notifying the
9 secretary of state.

10 (c) The general custodian of election records shall provide
11 a training plan for relevant election officials, staff, and
12 temporary workers that addresses the procedures authorized under
13 this section.

14 Sec. 129.054. ACCESS TO VOTING SYSTEM EQUIPMENT. The
15 general custodian of election records shall secure access control
16 keys or passwords to voting system equipment. Use of access control
17 keys or passwords must be witnessed by one or more individuals
18 authorized to use that information. The use of an access control
19 key or password must be documented and witnessed in a log dedicated
20 for that purpose.

21 Sec. 129.055. NETWORK CONNECTIONS AND WIRELESS TECHNOLOGY.

22 (a) A voting system may not be connected to any external
23 communications network, including the Internet.

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

26 Sec. 129.056. SOFTWARE. The sole purpose of voting system
27 equipment is the conduct of an election, and only software

1 certified by the secretary of state and necessary for an election
2 may be loaded on the equipment.

3 Sec. 129.057. PLAN FOR MACHINE FAILURE. The general
4 custodian of election records shall create a contingency plan for
5 addressing direct recording electronic voting machine failure.
6 This plan must include the timely notification of the secretary of
7 state.

8 Sec. 129.058. USE OF MACHINE IN EARLY VOTING. A direct
9 recording electronic voting machine deployed for early voting may
10 not be deployed on election day.

11 Sec. 129.059. POSTING. At each polling place at which a
12 direct recording electronic voting machine is used for voting,
13 postings must indicate the penalties for tampering with the
14 machines in each language used at that polling place for the ballot.

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