

BILL ANALYSIS

Senate Research Center
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S.B. 1006
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Every election brings a flurry of disturbing stories of voting gone awry, many of them involving electronic voting. Electronic voting provides no way of determining if a person has made a mistake, if there is a software or machine error, or if volunteer poll workers have been properly trained on handling the new technology. It also provides no way to double-check a close election. Several states have taken action to remedy these problems by requiring electronic voting machines to produce a voter-verified paper trail.

As proposed, S.B. 1006 requires direct recording electronic voting machines to create a paper record of each electronic ballot cast for the voter to privately and independently view and verify. This paper record will be considered official in the case of a recount; otherwise, the electronic vote is considered to be the recorded vote. The bill also requires any authority adopting a system using such machines to provide requested documentation to the secretary of state of certain information set forth in the bill about the machines, provides specific protocol for their testing, and outlines security measures for their transport and external access.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 129, Election Code, as follows:

CHAPTER 129. DIRECT RECORDING ELECTRONIC VOTING MACHINES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 129.001. New heading: APPLICABILITY. Applies this chapter to voting systems that use direct recording electronic voting machines (DRE voting machines). Applies the applicable procedures of Chapter 127 (Processing Electronic Voting System Results) to a voting system under this chapter to the extent possible.

Sec. 129.002. New heading: GENERAL PROCEDURES. (a) Creates this subsection from existing text of Section 129.001(b). Deletes a requirement that the general custodian of election records (custodian) include specific testing of each DRE voting machine's logic and accuracy functions.

(b) Redesignated from existing Section 129.001(c).

(c) Redesignated from existing Section 129.001(e). Deletes existing Section 129.001(d), providing that the custodian conduct a recount to confirm vote total accuracy in an election in which DRE voting machines are first used. Makes a conforming change.

(d) Prohibits a provisional vote from being cast on a DRE voting machine.

Sec. 129.003. DEFINITION. Defines "electronic information storage medium."

Sec. 129.004. PAPER AUDIT TRAIL REQUIRED. (a) Prohibits a DRE voting system consisting of DRE voting machines from being used in an election unless the system has been certified and creates a paper record of each ballot as set forth in this subsection.

(b) Requires a voter to be permitted to privately and independently view the paper record copy (copy) required under Subsection (a)(2) without being allowed to handle the copy. Authorizes the vote to be recorded electronically and requires the copy to be deposited in a secure storage container once the voter confirms that the copy corresponds to the vote that the voter indicated electronically. Requires the system to take remedial actions set forth in this subsection to remedy a copy that the voter has found does not correspond to the voter's electronically indicated choices.

(c) Sets forth the information the copy must contain.

(d) Provides that, except for a recount under Title 13, the electronic vote is the official record of the ballot and that for recounts of ballots cast on a system involving DRE voting machines, the copy is the official record of votes cast.

(e) Authorizes a system involving DRE voting machines that was acquired before January 1, 2008 to be used in an election without meeting the requirements of this section only if certain criteria are met. Sets forth the conditions under which a system may be used without satisfying the requirements of this section.

(f) Authorizes a record created under Subsection (e)(2) (a permanent record of each ballot created at the time the ballot is cast or during the local canvass of the votes) to be in a paper format or an electronically recorded image.

[Reserves Sections 129.005-129.020 for expansion.]

SUBCHAPTER B. PRE-ELECTION ACCEPTANCE AND TESTING OF VOTING SYSTEM

Sec. 129.021. REQUIREMENTS FOR SYSTEM USING DIRECT RECORDING ELECTRONIC VOTING MACHINES. Requires an authority adopting a system that uses DRE voting machines to provide documentation and source codes as set forth in this section to the secretary of state on request.

Sec. 129.022. ACCEPTANCE TESTING. Requires a custodian immediately after the custodian has received a DRE voting machine from a vendor to take certain actions.

Sec. 129.023. HARDWARE DIAGNOSTIC TEST. Requires the custodian to perform a successful hardware diagnostic test before using a DRE voting system in an election. Sets forth the requirements of the test.

Sec. 129.024. LOGIC AND ACCURACY TEST. (a) Requires the custodian to create a testing board with at least two persons and to make every reasonable effort to ensure that the board consists of at least one person from each political party that holds a primary election.

(b) Requires the custodian to perform a logic and accuracy test on the DRE voting system no later than 48 hours before voting begins on the system. Requires public notice of the test to be published at least 48 hours before the test begins and to be open to the public.

(c) Requires the custodian to adopt procedures for testing that require certain actions and include certain votes.

(d) Requires the testing board and custodian, in order to provide a full and accurate account of the condition of a given DRE voting machine, to sign a written statement attesting to the qualification of each successfully tested DRE

voting machine and any discovered problems with the machines, and to provide any other necessary documentation.

(e) Requires the testing board, on testing completion, to witness and document all steps taken to reset, seal, and secure any equipment or test materials, as appropriate.

Sec. 129.025. SECURITY OF TEST MATERIALS. (a) Requires the custodian, on completion of each test, to place the test materials in a container provided for that purpose and seal it. Requires the custodian and at least two members of the testing board to sign the seal.

(b) Requires the testing materials to remain sealed indefinitely for preserving the precinct election records.

(c) Prohibits the unsealing of the container unless the contents are necessary to conduct a test under this subchapter, a criminal investigation, election contest, or other official proceeding under this code. Requires the authority in charge of a proceeding in which the container was unsealed to reseal the contents when not in use.

[Reserves Sections 129.026-129.050 for expansion.]

SUBCHAPTER C. VOTING SYSTEM SECURITY

Sec. 129.051. SECURITY PLAN. Requires the authority responsible for holding an election, not later than the 90th day before the date a DRE voting machine system is to be used in an election, to submit to the secretary of state a physical security plan for the system.

Sec. 129.052. PRE-ELECTION SECURITY PROCEDURE. (a) Requires the custodian to create and maintain an inventory of all electronic information storage media (storage media).

(b) Requires the custodian to develop a procedure for tracking the custody of each storage medium from its storage location through election coding and the election process, and to its final post-election disposition and return to storage. Requires the chain of custody to have two or more individuals perform a check and verification during every transfer of custody.

(c) Requires the custodian to establish a secure location for actions related to the storage and usage of storage media.

(d) Requires a storage medium to be kept in the presence of an election official or in a secured location once coded for an election.

(e) Requires the custodian to create a procedure for tracking the custody of the DRE voting system equipment once election parameters are loaded.

(f) Requires the custodian to create a recovery plan to be followed in case of a breach in security procedures. Requires the plan to include an immediate notification of the secretary of state.

(g) Requires the authority responsible for holding an election in which DRE voting machines will be used, not later than the 46th day before that election is held, to submit to the secretary of state certain information set forth in this subsection.

Sec. 129.053. TRANSPORT OF VOTING SYSTEM EQUIPMENT. (a) Requires the custodian to adopt procedures for securely storing and transporting DRE voting system equipment. Requires the procedures to include provisions for locations outside the

custodian's direct control, including overnight storage at a polling location. Requires procedures relating to the chain of custody to require two or more individuals to perform a check and verification check during every transfer of custody.

(b) Requires the custodian to create a recovery plan to be followed in case of a breach in security procedures. Requires the plan to include an immediate notification of the secretary of state.

(c) Requires the custodian to develop a training plan for certain election personnel that addresses the procedures authorized under this section.

Sec. 129.054. ACCESS TO VOTING SYSTEM EQUIPMENT. Requires the custodian to secure access control keys or passwords to DRE voting system equipment. Requires the use of such keys or passwords to be witnessed by one or more individuals authorized to use such information. Requires the use of such keys or passwords to be documented and witnessed in a log dedicated to that purpose.

Sec. 129.055. NETWORK CONNECTIONS AND WIRELESS TECHNOLOGY. Prohibits connecting a DRE voting system to any external communications network, including the Internet. Prohibits a DRE voting system from having wireless communication capability.

Sec. 129.056. SOFTWARE. Provides that the sole purpose of DRE voting system equipment is the conduct of an election and authorizes only necessary software certified by the secretary of state to be loaded on the equipment.

Sec. 129.057. PLAN FOR MACHINE FAILURE. Requires the custodian to create a contingency plan to be followed in case of a DRE voting machine failure. Requires the plan to include an immediate notification of the secretary of state.

Sec. 129.058. USE OF MACHINE IN EARLY VOTING. Prohibits a DRE voting machine deployed for early voting from being deployed again on election day.

Sec. 129.059. POSTING. Requires postings at each polling place where DRE voting machines are used that indicate the penalties for tampering with the machines in each language used at that polling place for the ballot.

SECTION 2. Effective date: January 1, 2008.