

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 66.058, Election Code, is amended by adding Subsection (g) to read as follows:

(g) Electronic records created under Chapter 129 shall be preserved in a secure container.

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

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

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

[Sections 129.003-129.020 reserved for expansion]

SUBCHAPTER B. PRE-ELECTION ACCEPTANCE AND

TESTING OF VOTING SYSTEM

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

(1) verify that the system delivered is certified by the secretary of state;

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

1 (3) perform a public test of logic and accuracy on the
2 system as provided by Section 129.023; and

3 (4) perform any additional test that the secretary of
4 state may prescribe.

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

8 (b) The hardware diagnostic test must ensure that each part
9 of the system functions properly as prescribed by the secretary of
10 state.

11 Sec. 129.023. PUBLIC TEST OF LOGIC AND ACCURACY. (a) The
12 general custodian of election records shall create a testing board
13 consisting of at least two persons. The general custodian of
14 election records shall make every reasonable effort to ensure that
15 the testing board consists of at least one person from each
16 political party that holds a primary election.

17 (b) Not later than 48 hours before voting begins on a voting
18 system, the general custodian of election records shall conduct a
19 logic and accuracy test. Public notice of the test must be
20 published at least 48 hours before the test begins, and the test
21 must be open to the public.

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

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

25 (2) verify that each contest position on the ballot
26 can be voted and is accurately counted for each precinct and ballot
27 style;

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

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

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

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

8 (7) calculate the expected results from the test
9 ballots;

10 (8) ensure that each voting machine has any public
11 counter reset to zero and presented to the testing board for
12 verification before testing;

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

17 (10) require that, when all votes are cast, the
18 general custodian of election records and the testing board observe
19 the tabulation of all ballots and compare the actual results to the
20 expected results.

21 (d) A test is successful if the actual results are identical
22 to the expected results.

23 (e) To provide a full and accurate account of the condition
24 of a given voting machine, the testing board and the general
25 custodian of election records shall:

26 (1) sign a written statement attesting to:

27 (A) the qualification of each direct recording

1 electronic voting machine that was successfully tested;

2 (B) any problems discovered; and

3 (C) the cause of any problem if it can be
4 identified; and

5 (2) provide any other documentation as necessary.

6 (f) On completing the testing:

7 (1) the testing board shall witness and document all
8 steps taken to reset, seal, and secure any equipment or test
9 materials, as appropriate; and

10 (2) the general custodian for election records shall
11 preserve a copy of the system's software at a secure location that
12 is outside the administrator's and programming entity's control
13 until at least 22 months after election day.

14 Sec. 129.024. SECURITY OF TEST MATERIALS. (a) On
15 completing each test, the general custodian of election records
16 shall place the test materials in a container provided for that
17 purpose and seal the container in a manner that prevents opening
18 without breaking the seal. The general custodian of election
19 records and at least two members of the testing board shall sign the
20 seal.

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

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

1 [Sections 129.025-129.050 reserved for expansion]

2 SUBCHAPTER C. VOTING SYSTEM SECURITY

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

6 (b) The general custodian of election records shall develop
7 a procedure for tracking the custody of each electronic information
8 storage medium from its storage location, through election coding
9 and the election process, to its final post-election disposition
10 and return to storage. The chain of custody must require two or
11 more individuals to perform a check and verification check whenever
12 a transfer of custody occurs.

13 (c) The general custodian of election records shall
14 establish a secured location for storing electronic information
15 storage media when not in use, coding a medium for an election,
16 transferring and installing the medium into voting system
17 equipment, and storing voting system equipment after election
18 parameters are loaded.

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

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

25 (f) 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 (g) The general custodian of election records shall conduct
3 a criminal background check for relevant election officials, staff,
4 and temporary workers upon hiring.

5 Sec. 129.052. TRANSPORT OF VOTING SYSTEM EQUIPMENT. (a)
6 The general custodian of election records shall adopt procedures
7 for securely storing and transporting voting system equipment. The
8 procedures shall include provisions for locations outside the
9 direct control of the general custodian of election records,
10 including overnight storage at a polling location. Procedures
11 relating to the chain of custody must require two or more
12 individuals to perform a check and verification check whenever a
13 transfer of custody occurs.

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

18 (c) The general custodian of election records shall provide
19 a training plan for relevant election officials, staff, and
20 temporary workers that addresses the procedures authorized under
21 this section.

22 Sec. 129.053. ACCESS TO VOTING SYSTEM EQUIPMENT. The
23 general custodian of election records shall secure access control
24 keys or passwords to voting system equipment. Use of access control
25 keys or passwords must be witnessed by one or more individuals
26 authorized to use that information. The use of an access control
27 key or password must be documented and witnessed in a log dedicated

1 for that purpose that is retained until the political subdivision
2 disposes of the equipment.

3 Sec. 129.054. NETWORK CONNECTIONS AND WIRELESS TECHNOLOGY.

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

6 (b) A voting system may not have the capability of
7 permitting wireless communication unless the system uses
8 line-of-sight infrared technology that shields the transmitter and
9 receiver from external infrared transmissions and the system can
10 only accept transmissions generated by the system.

11 Sec. 129.055. EQUIPMENT AND SOFTWARE. The sole purpose of
12 voting system equipment is the conduct of an election, and only
13 software certified by the secretary of state and necessary for an
14 election may be loaded on the equipment.

15 Sec. 129.056. PLAN FOR MACHINE FAILURE. The general
16 custodian of election records shall create a contingency plan for
17 addressing direct recording electronic voting machine failure.
18 This plan must include the timely notification of the secretary of
19 state.

20 Sec. 129.057. USE OF MACHINE IN EARLY VOTING. A direct
21 recording electronic voting machine deployed for early voting may
22 not be deployed on election day.

23 SECTION 3. This Act takes effect September 1, 2009.

H.B. No. 2524

President of the Senate

Speaker of the House

I certify that H.B. No. 2524 was passed by the House on May 12, 2009, by the following vote: Yeas 149, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2524 was passed by the Senate on May 27, 2009, by the following vote: Yeas 28, Nays 3.

Secretary of the Senate

APPROVED: _____

Date

Governor