



S.B. 77

126th General Assembly
(As Introduced)

Sen. Grendell

BILL SUMMARY

- Permits a direct recording electronic (DRE) voting machine that was certified for use on January 1, 2005, to continue to be used on or after the bill's effective date if it is modified to meet the requirements of the Help America Vote Act of 2002 on and after the first federal election that is held after January 1, 2006, and, when technologically and economically feasible, to include a voter verified paper audit trail at the earliest available opportunity.
- Requires the Secretary of State, if certification of any DRE voting machine that was certified for use on January 1, 2005, is withdrawn, to reimburse a county that was using that type of voting machine for certain costs.
- Requires a DRE voting machine that a county purchased, rented, or otherwise acquired before January 1, 2005, to include a voter verified paper audit trail at the earliest available opportunity when it is technologically and economically feasible, instead of (as currently required) on and after the first federal election that occurs after January 1, 2006.
- Provides that the general requirement that a voter verified paper audit trail be capable of being optically scanned for recount purposes and readable by the voter in a specified manner applies to DRE voting machines acquired before January 1, 2005, only when it is technologically and economically feasible to meet the requirement.

CONTENT AND OPERATION

Direct recording electronic voting machines

In general

Under existing Ohio law, one of the various types of voting machines that a county may adopt for use in elections is a direct recording electronic (DRE) voting machine that has been certified by the Secretary of State pursuant to statutory procedures involving prior approval by the Board of Voting Machine Examiners (sec. 3506.05; secs. 3506.01(E) and (F) and 3506.02--not in the bill) (see **COMMENT 1**). Existing Ohio law requires that, on and after the first federal election that is held after January 1, 2006 (unless required sooner by the federal Help America Vote Act of 2002 (HAVA)), all DRE voting machines used in this state must include a "voter verified paper audit trail" (sec. 3506.10(P)) (see **COMMENT 2**).

Changes proposed by the bill

Continued use permissible. The bill provides that, notwithstanding anything in the Revised Code or anything in the Secretary of State's rules, instructions, directives, or advisories to the contrary, any DRE voting machine that was certified for use in Ohio on January 1, 2005, may continue to be used for elections conducted in the state *on or after the bill's effective date*, if it is modified as follows (secs. 3506.10(P)(2) and 3506.20(A)):

- To meet the requirements of HAVA on and after the first federal election that is held after January 1, 2006 (see **COMMENT 3**).
- To include a voter verified paper audit trail at the earliest available opportunity when it is technologically and economically feasible (see further detail below).

Reimbursement by Secretary of State. The bill relatedly provides that, if the Secretary of State withdraws the certification of any DRE voting machine that was certified for use in Ohio on January 1, 2005 (thereby precluding its use by a county that had purchased, rented, or acquired that type of voting machine), the Secretary of State must reimburse each county that was using that type of voting machine for any costs it incurs for *either* of the following (sec. 3506.20(B)):

- Acquiring voting machines, marking devices, or automatic tabulating equipment to replace its

DRE voting machines whose certification is withdrawn.

- Operating the replacement voting machines, marking devices, or automatic tabulating equipment for a period of four years after their acquisition if the costs of that operation exceed the county's estimated costs, for the same period, of operating its DRE voting machines whose certification is withdrawn.

Voter verified paper audit trails

When required

The bill modifies the requirement mentioned previously that, unless required sooner by HAVA, a DRE voting machine must include a voter verified paper audit trail on and after the first federal election that occurs after January 1, 2006. This requirement, under the bill, would apply only to those DRE voting machines that a county purchases, rents, or otherwise acquires *on or after January 1, 2005*. A DRE voting machine that a county purchased, rented, or otherwise acquired *before that date* would not have to include a voter verified paper audit trail until "at the earliest available opportunity when it is technologically and economically feasible." (Sec. 3506.10(P)(1) and (2).)

Certification standards

Existing law. Under existing law, the Secretary of State, in consultation with the Board of Voting Machine Examiners, is required to adopt rules establishing guidelines for the approval, certification, and continued certification of voting machines, marking devices, and tabulating equipment. In addition to these general rules, before the initial certification of any DRE voting machine with a voter verified paper audit trail and as a condition for the continued certification and use of those machines, the Secretary of State must adopt rules establishing *certification standards* for those machines (sec. 3506.05(H)(3)(a)). Among those standards is a requirement that the voter verified paper audit trail be capable of being optically scanned for the purpose of conducting a recount or other audit of the voting machine and be readable in a manner that makes the voter's ballot choices obvious to the voter without the use of computer or electronic codes. This requirement, however, can be *waived* by the Secretary of State if it is determined to be "cost prohibitive"; the waiver must be by a rule adopted under the Administrative Procedure Act. (Sec. 3506.05(H)(3)(a)(v) and (b).) (See **COMMENT 4.**)

Changes proposed by the bill. The bill instead provides that the waiver of the optical scanning and readability requirement applies only with regard to DRE voting machines purchased, rented, or otherwise acquired on or after January 1, 2005. This is because, under the bill consistent with its "when required" provisions, for DRE voting machines purchased, rented, or otherwise acquired for use *before January 1, 2005*, the optical scanning and readability requirement will apply only when meeting that requirement is technologically and economically feasible. (Sec. 3506.05(H)(3)(a)(v), (b), and (c).)

COMMENT

1. A "direct recording electronic voting machine" is one that records votes by means of a ballot display provided with mechanical or electro-optical components that can be actuated by the voter, that processes the data by means of a computer program, and that records voting data and ballot images in internal or external memory components (sec. 3506.01(F)--not in the bill).

2. A "voter verified paper audit trail" (VVPAT) is a physical paper printout on which the voter's ballot choices, as registered by a DRE voting machine, are recorded. After the printout is produced, but before the voter's ballot is recorded, the voter must have an opportunity to accept or reject the contents of the printout as matching the voter's ballot choices. If the voter rejects the contents, the system producing the VVPAT must invalidate the printout and permit the voter to recast the voter's ballot. (Sec. 3506.01(H)--not in the bill.) See **COMMENT 4** below for further detail.

3. Consistent with HAVA "disabled individual accessibility" provisions, Ohio law requires, on and after the first federal election that occurs after January 1, 2006, unless required sooner by HAVA, each polling location to have available for use at all elections at least one DRE voting machine that is accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters (sec. 3506.19--not in the bill). Ohio law also requires, on and after the first federal election that occurs after January 1, 2006, unless required sooner by HAVA, any system that produces a voter verified paper audit trail to be accessible to disabled voters, including visually impaired voters, in the same manner as the DRE voting system that produces it (sec. 3506.01(H)--not in the bill).

4. Current law requires the Secretary of State's standards for DRE voting machines with a voter verified paper audit trail (VVPAT) to include, in addition to the standards previously discussed in this analysis, (a) a definition of a VVPAT as a paper record of the voter's choices that is verified by the voter prior to the casting

of the voter's ballot and that is securely retained by the board of elections, (b) a requirement that the VVPAT not be retained by any voter and a requirement that it not contain individual voter information, (c) a prohibition against the production by the DRE voting machine of anything that legally could be removed by the voter from the polling place (for example, a receipt or voter confirmation), and (d) a requirement that paper used in producing a VVPAT be sturdy, clean, and resistant to degradation. The definition of a "voter verified paper audit trail" further requires that the physical paper printout be securely retained, in accordance with Secretary of State storage rules, at the polling place until the close of the polls on the day of an election. (Sec. 3506.01(H)--not in the bill and sec. 3506.05(H)(3)(a)(i) to (iv)).

HISTORY

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Introduced	02-23-05	p. 205

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