

Stricken language would be deleted from and underlined language would be added to present law.
Act 1218 of the Regular Session

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: S3/11/15 H3/26/15
A Bill

SENATE BILL 816

By: Senator B. Sample
By: Representative Rushing

For An Act To Be Entitled

AN ACT TO AMEND THE ELECTION LAWS CONCERNING ELECTION
EQUIPMENT, TESTING PROCEDURES, ELECTION PROCESSES,
AND ELECTION PROCEDURES; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE ELECTION LAWS CONCERNING
ELECTION EQUIPMENT, TESTING PROCEDURES,
ELECTION PROCESSES, AND ELECTION
PROCEDURES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 7-1-101(18), concerning the definition of "marking device", is amended to read as follows:

(18) "Marking device" means any approved device ~~for marking a paper ballot with ink or other substance that will enable the votes to be tabulated by means of an electronic vote tabulating device~~ operated by a voter to record the voter's choices through marking or creating a paper ballot with ink or other substance that will enable the votes to be tabulated by means of an electronic vote tabulating device;

SECTION 2. Arkansas Code § 7-1-101(40)(B), concerning the definition of "voting machine", is amended to read as follows:

(B) ~~An electronic device for marking a paper ballot to be electronically scanned~~ One (1) or more electronic devices that operate independently or as a combination of a ballot marking device and an



electronic vote tabulating device; and

SECTION 3. Arkansas Code § 7-1-101, concerning definitions relevant to elections, is amended to add an additional subdivision to read as follows:

(42)(A) "Election media" means any device used in an election definition or to record votes cast with a direct record electronic machine or voting machine.

(B) "Election media" includes without limitation:

(i) Memory stick devices;

(ii) Digital flashcards;

(iii) Personalized electronic ballots (PEBs);

(iv) Personal Computer Cards; and

(v) Zip disks.

SECTION 4. Arkansas Code § 7-5-301(e)(2), concerning prerequisites to the purchase or procurement of a voting machine or electronic vote tabulating device by the Secretary of State, is amended to read as follows:

(2) Provide, if deemed necessary by the county, personnel for the supervision and training of county personnel for at least two (2) elections, one (1) primary and one (1) general at no additional cost to the county or the Secretary of State.

SECTION 5. Arkansas Code § 7-5-504 is amended to read as follows:

7-5-504. Machine specifications.

No make of voting machine shall be approved for use unless it is so constructed that:

(1) It will ensure secrecy to the voter in the act of voting;

(2) It shall provide ~~facilities~~ the capacity for voting for or against as many questions as may be submitted;

(3) It shall permit the voter to vote separately for the candidate of his or her choice for each office or position to be voted upon and to vote separately on each issue to be decided by election;

(4) It shall permit the voter to vote for as many persons for an office for whom he or she is lawfully entitled to vote, but no more;

(5) It shall prevent the voter from voting for the same candidate

or question more than one (1) time;

(6) It shall permit the voter to verify in a private and independent manner the votes selected by the voter on the ballot before the ballot is cast;

(7) It shall provide the voter with the opportunity in a private and independent manner to change the ballot or correct any error before the ballot is cast;

(8) ~~It~~ If it is a direct recording electronic voting machine, it shall include a voter-verified paper audit trail, except as provided under § 7-5-301(b);

(9) If the voter is legally entitled to select only one (1) candidate for an office but the voter selects more than one (1) candidate for the office, it shall notify the voter before the ballot is cast that he or she has selected more than one (1) candidate for the office on the ballot, notify the voter of the effect of casting multiple votes for the office, and provide the voter with the opportunity to correct the ballot before the ballot is cast;

(10) It shall permit the voter to vote for or against any question on which he or she may have the right to vote, but no other;

(11) It shall be capable of being programmed to display for voting purposes only the voter's proper ballot;

(12) It shall correctly register and record and accurately count all votes cast for any and all persons and for or against any and all questions;

(13) It shall be provided with a protective device to prevent any unauthorized operation of the machine before or after the election;

(14) It shall be provided with a counter or tabulator which shall show at all times during the election how many persons have voted;

(15) It shall be so equipped and constructed so that it can be made inaccessible to further voting after the polls have closed and all voters who were in line at the time the polls closed have voted;

(16) It shall permit a voter to vote in any election for any person for whom he or she wishes to vote when the person's name does not appear upon the voting machine;

(17) It bears a ~~number~~ unique numerical, alphabetical, or alphanumeric sequence identifier that ~~will distinguish~~ distinguishes it from

any other machine;

(18) It shall be provided with a screen, hood, or partition which shall allow the voter to vote a secret ballot;

(19) It shall be capable of being operated from an alternate power source should the need arise;

(20) It shall permit voters with disabilities to vote unassisted if they so desire; and

(21) It shall be:

(A) Qualified by ~~the National Association of State Election Directors or~~ an authorized federal agency or national testing and standards laboratory which is acceptable to the Secretary of State;

(B) Approved by the State Board of Election Commissioners; and

(C) Selected by the Secretary of State.

SECTION 6. Arkansas Code § 7-5-507(a), concerning demonstration of the voting machines, are amended to read as follows:

(a)(1) The manufacturer shall demonstrate the machine to the county election officials prior to the first election at which the machines are placed in use.

(2) The date for the demonstration shall be ~~set by~~ agreed upon by the vendor and the county board of election commissioners.

SECTION 7. Arkansas Code § 7-5-509(a) and (b), concerning the voting machines used for demonstration, are amended to read as follows:

(a)(1) The county board of election commissioners may designate suitable times and places where voting machines shall be exhibited for the purpose of giving instructions in their use to all voters who apply for instruction.

(2) Public notice of the times and places where voting machines will be exhibited shall be given at least forty-eight (48) hours before the first date of demonstration by publication one (1) time in one (1) or more daily or weekly newspapers published in the town, city, or county using the machines if a newspaper is published in the town, city, or county.

~~(b)(1) At least one (1) machine for demonstration purposes shall be placed in each precinct not more than twenty five (25) days nor less than ten~~

~~(10) days before each election, when practical.~~ The location of voting machines for demonstration shall be in accessible public buildings.

(2) The voting machines used for demonstration shall display sample ballots showing the title of offices to be filled and, as far as practicable, the names of the candidates in the next election.

SECTION 8. Arkansas Code § 7-5-510(b), concerning forms for complaints about the function of voting machines, is amended to read as follows:

(b)(1) A voter may file a complaint form with a poll worker who shall forward the complaint form to the county board of election commissioners.

(2) A copy of each complaint shall be provided to the Elections Division of the Secretary of State.

(3) It shall be the duty of the county board of election commissioners to investigate complaints regarding the function of a voting machine.

SECTION 9. Arkansas Code § 7-5-515 is amended to read as follows:

7-5-515. Preparation of machines for election ~~– Logic and accuracy testing and public testing.~~

(a) Immediately upon the proper certification of candidates and questions, the county board of election commissioners shall prepare the voting machines, oversee their programming, and test and adjust the voting machines for the election.

(b) In performing ~~this function~~ these functions, the county board may be assisted by experts appointed or employed by the county board.

(c)(1) ~~At least~~ As soon as the election media is prepared, but no later than seven (7) days prior to the beginning of voting, the county board, with respect to all elections, shall ~~have each machine~~ conduct logic and accuracy testing by having all election media tested to ascertain that the voting system has been correctly configured and will correctly count ~~count~~ tabulate the votes cast for all offices and on all measures.

(2) Public In addition to the logic and accuracy testing under subdivision (c)(1) of this section, the county board of election commissioners shall conduct public testing as follows:

(A) The county board shall give public notice of the time and place of the test ~~shall be given~~ at least forty-eight (48) hours prior to

the public test by publication one (1) time in one (1) or more daily or weekly newspapers published in the town, city, or county using the machines if a newspaper is published in the town, city, or county~~;~~

~~(3)~~(B) The public test shall be open to representatives of the political parties, candidates, media, and the public~~;~~

~~(4)~~(C)(i) The public test shall be conducted by processing a preaudited group of test ballots that are to be voted on the machines so as to record a predetermined number of valid votes for each candidate and on each measure.

(ii) The public test shall include for each office one (1) or more ballots which have votes in excess of the number allowed by law in order to test the ability of the machines to reject the votes~~;~~ and

~~(5)~~(D) If any error is detected, the cause shall be ascertained and corrected and an errorless count shall be made before the machine is approved.

(d) After completion of the logic and accuracy test and the public test, the ballots and programs used shall be sealed, retained, and disposed of as provided by law.

(e) After completion of the logic and accuracy test and the public test, the county board of election commissioners shall certify the accuracy of the voting system ~~and file by:~~

(1) Sending a copy of the electronic results to the Secretary of State; and

(2) Filing the test results with the county clerk.

SECTION 10. Arkansas Code § 7-5-517(b)-(d), concerning certification of secured voting machines, are amended to read as follows:

(b)(1) Any device required to activate the machine shall be placed in a package on which shall be written the serial number and the precinct location of the voting machine and the number registered on the ~~protective counter or~~ device.

(2) The package shall be sealed in the presence of the representatives of the candidates or the candidates themselves.

(c) The county board of election commissioners shall then certify, in the presence of the candidates or their representatives, the serial numbers of the machines, that all question counters are set at zero (000), ~~and the~~

~~number registered on the protective counter of the machine.~~

(d) ~~Any activator pack or~~ An activation device required for voting on the voting machines shall be kept by the county board until turned over for delivery to the election officials with the election equipment at the polling site for election day.

SECTION 11. Arkansas Code § 7-5-518(c)(2), concerning certification of counters, is amended to read as follows:

(2) ~~The~~ After the close of voting on election day, the certified printout, signed by the poll workers, shall be ~~filed:~~

(A) Returned to the county board; and

(B) Filed with the election returns.

SECTION 12. Arkansas Code § 7-5-526(a), concerning closing of polls, securing machines, and the poll workers' certificate, is amended to read as follows:

(a) At the official time for closing the polls and upon termination of the voting, the poll workers shall announce that the polls have closed and in the presence of all persons authorized to be present shall remove the activation ~~packs or~~ devices from the voting machines to make them inaccessible to further voting.

SECTION 13. Arkansas Code § 7-5-527(c), concerning exposure of the count, verification, return record, and official signatures, is amended to read as follows:

(c)(1) The poll worker shall proceed to produce the ~~return~~ result record in a minimum of three (3) copies.

(2)(A) The ~~return~~ result record shall be deemed the official count for that machine.

(B) One (1) copy of the completed return record for that machine shall be posted upon the wall of the polling room for all to see.

SECTION 14. Arkansas Code § 7-5-527(e)(1), concerning exposure of the count, verification, return record, and official signatures, is amended to read as follows:

(e)(1) The activation ~~pack or~~ device used to collect votes from each

voting machine and all certified ~~return~~ result records shall be placed in a package that shall be sealed and signed by all the poll workers and any watchers that may desire to affix a signature.

SECTION 15. Arkansas Code § 7-5-606(b)(2), concerning approval of equipment specifications, is amended to read as follows:

(2) The board shall examine the marking device or the electronic vote tabulating device and file a report in the office of the Secretary of State of its accuracy, efficiency, and capacity.

SECTION 16. Arkansas Code § 7-5-606(d), concerning approval of equipment specifications, is amended to read as follows:

(d) ~~Electronic~~ Marking devices or electronic vote tabulating devices not approved by the board or selected by the Secretary of State may not be used in any lawful election in this state.

SECTION 17. Arkansas Code § 7-5-609 is amended to read as follows:

7-5-609. Spoiled ballots.

Any voter who spoils his or her ballot or makes an error may return it to the election officials and ~~secure~~ mark another, not to exceed three (3) in all.

SECTION 18. Arkansas Code § 7-5-610 is amended to read as follows:

7-5-610. Write-in ballots.

In all elections in which write-in candidacies are allowed, the ballot shall permit electors to ~~write-in~~ submit the names of persons who have qualified as write-in candidates and whose names are not on the ballot.

SECTION 19. Arkansas Code § 7-5-611 is amended to read as follows:

(a)(1) The county board of election commissioners, with respect to all elections, shall cause the electronic vote tabulating devices used for voting to be properly programmed and tested before delivery to the election precincts.

(2) ~~At least~~ As soon as the election media is prepared, but no later than seven (7) days prior to the beginning of voting, the county board, with respect to all elections, shall ~~have~~ conduct logic and accuracy testing

by having all election media from each electronic vote tabulating device tested to ascertain that the devices will correctly ~~count~~ tabulate the votes cast for all offices and on all measures.

~~(3) Public~~

(b) In addition to the logic and accuracy test under subsection (a) of this section, the county board of election commissioners shall conduct public testing as follows:

(1) The county board shall provide public notice of the time and place of the public test ~~shall be given~~ at least forty-eight (48) hours prior thereto by publication one (1) time in one (1) or more daily or weekly newspapers published in the town, city, or county using the devices, if a newspaper is published therein;

~~(4)(2)~~ The public test shall be open to representatives of the political parties, candidates, the press, and the public;

~~(5)(A)(3)(A)~~ The public test shall be conducted by processing predetermined results from a group of ballots marked to record a predetermined number of valid votes for each candidate and on each measure for each precinct or voting location.

(B) Prior to the start of the public test, a printout shall be generated to show that no votes are recorded on the electronic vote tabulating device;

(C) The public test shall include for each office one (1) or more ballots which have votes in excess of the number allowed by law in order to test the ability of the electronic vote tabulating devices to reject such votes;

~~(6)(4)~~ If any error is detected, the cause shall be ascertained and corrected, and an errorless count shall be made before the electronic vote tabulating device or devices are certified for use in the election; and

~~(7)(5)~~ Upon completion of the ~~testing~~ public test, the electronic vote tabulating devices shall be cleared of any votes cast during the test.

~~(8)(c)~~ After completion of the logic and accuracy test and the public test, the county board of election commissioners shall certify the accuracy of the voting system ~~and file~~ by sending a copy of the electronic results to the Secretary of State and filing the test results with the county clerk.

~~(b)(1)~~(d)(1) Before the opening of the polls, the poll workers shall generate a printout from the electronic vote tabulating device or devices to verify that the candidates and measures are correct for the location and that no votes are recorded on the electronic vote tabulating device or devices.

(2) The poll workers shall sign and post the printout upon the wall of the polling room where it shall remain throughout the election day.

(3) The certified printout shall be filed with the election returns.

/s/B. Sample

APPROVED: 04/07/2015