



Susan Bysiewicz
SECRETARY OF THE STATE
CONNECTICUT

March 16, 2005

Senator Donald DeFronzo
Senate Chair, GAE Committee
Legislative Office Building, Room 2202
Hartford, CT 06106

Representative Christopher Caruso
House Chair, GAE Committee
Legislative Office Building, Room 2202
Hartford, CT 06106

Dear Senator DeFronzo and Representative Caruso:

Attached to this letter you will find my most recent proposal regarding voter-verified paper records. This proposed language incorporates the issues we discussed at our recent meetings and is drafted as substitute language for S.B. 55 AN ACT PROMOTING VOTING SYSTEM ACCURACY, INTEGRITY AND SECURITY THROUGH VOTER-VERIFIED PAPER RECORDS. Specifically it addresses:

(1) The cost of the voter-verified paper record.

Under this proposal the State of Connecticut would be allowed to use HAVA funding to purchase the machinery necessary to produce the voter-verified paper record because the record would not be considered the "official ballot". Therefore, such equipment would not fall under the purview of the Help America Vote Act;

(2) Accessibility for persons with disabilities.

The Help America Vote Act requires that all voters be given an equal chance to review their ballot choices before their votes are cast on an electronic voting machine. Under this proposal the electronic voting machines used in Connecticut will comply with this requirement because the voter-verified paper record will not be treated as the official ballot and therefore, will not treat voters differently as they cast their ballots;

(3) Voting machine audit standards.

In order to improve voter confidence, this proposal would establish new auditing standards. An audit of at least one electronic voting machine per polling place will take place after each election and primary even if there is no recanvass taking place. In addition, in the event of a recanvass, an audit of every electronic voting machine involved in the recanvass will take place. During that audit and for any court action thereafter a hierarchy has been established in the proposal that requires the voter-verified paper record to be given greater weight; and

(4) Voting machine standards.

Current statutes require the Secretary of the State to certify only those voting machines that have federal certification. This proposal does not change this requirement of the statutes. Therefore, my office is able to certify electronic voting machines with a voter-verified paper record absent independent federal certification and standards for the voter-verified paper record component because the voter-verified paper record will not be treated as the "official ballot".

As you are aware, I believe that the State of Connecticut would violate the provisions of the Help America Vote Act if we were to implement legislation that established the voter-verified paper record as the official ballot in any election or in any recount. As the Chief Election Official for the State of Connecticut, it is my duty to provide all voters with the highest level of confidence that elections in our state are accurate, fair, and secure. However, this duty must apply to all voters both able bodied and disabled. I believe that this proposal strikes the proper balance between the needs of the able bodied and the disabled community. This proposal allows all voters to ensure that their votes have been recorded accurately and brings confidence and integrity to the electoral process. It ensures that the voter-verified paper record is included and given priority weight in any discrepancy that may result from the use of the electronic equipment; and it allows persons with disabilities to participate fully and equally in the electoral process.

I have outlined the basic requirements of each section of this proposal below for your review.

Subsection (a) – This section remains unchanged from current law and SB55. It establishes that any voting machine so approved shall accommodate at least nine political parties, shall allow votes to be cast in private and shall prevent voters from casting votes for persons they are not entitled to vote for.

Subsection (b) – This section remains unchanged from current law and SB55. It establishes that an individual may not vote for the same person twice, or for more than one person per office unless they are entitled to do so, and shall allow all votes cast to be recorded on the voting machine.

Subsection (c) – This section remains unchanged from current law and SB55. It allows the Secretary of the State to approve for use, any voting machine that complies with federal standards, federal law, and state law.

Subsection (d) - Requires that every machine approved for use on or after January 1, 2006 be equipped with both a voter-verified paper record and hard copy audit output that can be used for the manual audit of the machine. The voter-verified paper record must be available for verification by the voter prior to voter casting their ballot. Finally, both records are considered official records that are preserved in the same manner as other election records such as ballots and applications.

Subsection (e)(1) - Requires that after every election or primary in which the electronic voting systems are used, a random audit of at least one machine is conducted and completed within 11 days after the election. This will give any interested party 3 days to file any complaint with a court of law. The audit will be completed by comparing the voter verified paper records to the totals produced by the voting machine and the hard copy audit output. Any discrepancies found during such audit that is likely to affect the outcome of the election or primary may be used as prima facie evidence of such discrepancy in any court challenge. During such court challenge the judge shall give weight to the evidence in the following order: (1) the voter-verified paper record, (2) the hard copy audit output, and (3) the votes as recorded electronically on the voting machine.

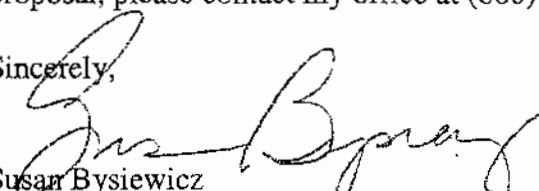
Subsection (e)(2) - Requires that when a recount is required by statute, a manual audit of every machine is conducted after any recount has been completed. The audit must be completed within 11 days after the election. This will give any interested party 3 days to file any complaint with a court of law. The audit will be completed by comparing the voter verified paper records to the totals produced by the voting machine and the hard copy audit output. Any discrepancies found during such audit that is likely to affect the outcome of the election or primary may be used as prima facie evidence of such discrepancy in any court challenge. During such court challenge the judge shall give weight to the evidence in the following order: (1) the voter-verified paper record, (2) the hard copy audit output, and (3) the votes as recorded electronically on the voting machine.

Subsection (e)(3) - Provides that these new requirements will not foreclose a candidate from pursuing any other remedies allowed to them by statute.

Subsection (e)(4) - Provides that if a manual audit is conducted on an optical scan voting machine that has been approved by the State of Connecticut, such audit shall follow the procedures already established for such examination in Connecticut Regulations. This is necessary because many of the optical scan voting systems do not produce a "hard copy audit output" because the actual ballot is still available for any hand recount.

Thank you and the other committee members for their hard work and dedication to this very important issue. If you have any additional questions or concerns regarding this proposal, please contact my office at (860) 509-6200.

Sincerely,


Susan Bysiewicz
Secretary of the State

Cc: Representative Tim O'Brien - Vice Chair, GAE Committee
Senator Edward Meyer - Vice Chair, GAE Committee

AN ACT PROMOTING VOTING SYSTEM ACCURACY, INTEGRITY AND SECURITY THROUGH VOTER-VERIFIED PAPER RECORDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 9-242 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2006*):

(a) A voting machine approved by the Secretary of the State shall be so constructed as to provide facilities for voting for the candidates of at least nine different parties or organizations. It shall permit voting in absolute secrecy. It shall be provided with a lock by means of which any illegal movement of the voting or registering mechanism is absolutely prevented. Such machine shall be so constructed that an elector cannot vote for a candidate or on a proposition for whom or on which he is not lawfully entitled to vote.

(b) It shall be so constructed as to prevent an elector from voting for more than one person for the same office, except when he is lawfully entitled to vote for more than one person for that office, and it shall afford him an opportunity to vote for only as many persons for that office as he is by law entitled to vote for, at the same time preventing his voting for the same person twice. It shall be so constructed that all votes cast will be registered or recorded by the machine.

(c) Notwithstanding the provisions of subsection (b), the Secretary of the State may approve a voting machine which requires the elector in the polls to place his ballot into the recording device and which meets the voluntary performance and test standards for voting systems adopted by the Federal Election Commission on January 25, 1990, as amended from time to time, and regulations which the Secretary of the State may adopt in accordance with the provisions of chapter 54, provided the voting machine shall (1) warn the elector of overvotes, (2) not record overvotes and (3) not record more than one vote of an elector for the same person for an office.

(d) A voting machine approved by the Secretary of the State on or after the effective date of this subdivision for use at an election or primary held on or after January 1, 2006, shall be so constructed as to produce a hard copy audit output with a manual audit capacity and an individual, permanent, voter-verified paper record for each elector casting a vote on the machine. Each such paper record or output shall (1) be suitable for a manual audit of such voting machine as described in subsection (e) of this section, and (2) be preserved in the same manner in which other election materials are preserved after the election. The voter-verified paper record shall be made available for inspection and verification by the elector prior to the elector casting the elector's vote on the voting machine.

(e) (1) After every election or primary in which any electronic voting machine is used, including any electronic voting machine or device approved for use in this state prior to January 1, 2006, the registrars of voters shall conduct a manual audit of the votes as recorded on at least one electronic voting machine in each voting district. Such manual

audit shall be completed by reviewing and comparing the voter-verified paper record to the hard copy audit output produced by the voting machine and the votes as recorded electronically on the voting machine. Such manual audit shall be completed within eleven days after any election or primary. If such audit discloses a discrepancy between the voter-verified paper record and the hard copy audit output or the votes as recorded electronically on the voting machine, and such discrepancy is likely to affect the outcome of the election or primary, the results of such audit may be used as prima facie evidence of such discrepancy in any contest relating to the election or primary pursuant to Chapter 149 of the general statutes. In deciding any contest pursuant to Chapter 149 of the general statutes, a court shall give weight to the evidence in the following order: (A) the voter-verified paper record, (B) the hard copy audit output, and (C) the votes as recorded electronically on the voting machine.

(2) Notwithstanding subdivision (1) of subsection (e), in an election or primary where any recanvass is required pursuant to chapter 148, the registrars of voters shall conduct a manual audit of all of the electronic voting machines used in the election or primary, including any electronic voting machine or device approved for use in this state prior to January 1, 2006, that is subject to the recanvass. Such manual audit shall be performed after any official recanvass as described in chapters 148 or 153 of the general statutes. Such manual audit shall be completed by reviewing and comparing the voter-verified paper record to the hard copy audit output produced by the voting machine and the votes as recorded electronically on the voting machine. Such manual audit shall be completed within eleven days after any election or primary. If such audit discloses a discrepancy between the voter-verified paper record and the hard copy audit output or the votes as recorded electronically on the voting machine, and such discrepancy is likely to affect the outcome of the election or primary, the results of such audit may be used as prima facie evidence of such discrepancy in any contest relating to the election or primary pursuant to Chapter 149 of the general statutes. In deciding any contest pursuant to Chapter 149 of the general statutes, a court shall give weight to the evidence in the following order: (A) the voter-verified paper record, (B) the hard copy audit output, and (C) the votes as recorded electronically on the voting machine.

(3) Nothing in this subsection shall preclude any candidate from seeking additional remedies pursuant to chapter 149.

(4) Any manual audit conducted on a voting machine that records votes by means of marks made in voting response locations shall be conducted in accordance with Connecticut Regulations.