

THIRTEENTH CONGRESS OF THE REPUBLIC )  
OF THE PHILIPPINES )  
First Regular Session )

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SENATE  
S. No. 1851

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Introduced by **Senator Richard J. Gordon**

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### EXPLANATORY NOTE

The veracity and efficiency of the electoral process is crucial to upholding the essence of democracy, because the authenticity of the results of elections in terms of reflecting the true sentiments of the people regarding their choice of leadership relies on the soundness of the system by which elections are held.

Republic Act No. 8436 authorized the Commission on Elections (COMELEC) to use an automated election system to ensure free, orderly, honest, peaceful and credible elections that protect the secrecy and sanctity of the ballot and reflect the genuine will of the people. To this day however, this law has not been fully implemented. The Supreme Court in the case of Information Technology Foundation of the Philippines, et al. vs. COMELEC, et al., G.R. No. 159139, 13 January 2004, scrapped the billion-peso automated election contract awarded to Mega Pacific Consortium due to anomalous bidding.

The enactment of Republic Act No. 9184 or the Government Procurement Reform Act also established a system to ensure transparency, competitiveness, streamlining, accountability and public monitoring of the procurement process of the national government, its departments, bureaus, offices and agencies.

As such, this bill seeks to formulate a legal framework that will allow the COMELEC to proceed with the modernization of the electoral process through an automated election system. It shall also incorporate provisions to address the problems in the case of ITFP, et al. vs. COMELEC, *supra*, and satisfy the requirements of the Government Procurement Reform Act with regard to the acquisition of the equipment that will be used for the elections. The proposed amendments shall ensure that the acquisition process for electoral equipment as well as the conduct of elections and the transmission of results, shall work effectively, to ensure credible elections that inspire the confidence of the people, as befits a true democracy.



**RICHARD J. GORDON**  
Senator

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**AN ACT AMENDING REPUBLIC ACT NO. 8436, ENTITLED "AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES"**

*Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:*

1 SECTION 1. Section 2 of Republic Act No. 8436 is hereby amended to read as  
2 follows:

3 "SEC. 2. Definition of Terms. – As used in this Act, the following terms  
4 shall mean:

5 X X X

6 2. Counting machine – ANY machine OR TECHNOLOGY that  
7 AUTOMATES THE DIFFERENT PHASES OF THE ELECTORAL PROCESS  
8 AND CAN HANDLE THE CASTING, COUNTING,  
9 CANVASSING/CONSOLIDATION AND TRANSMISSION OF VOTES,  
10 WHERE POSSIBLE [uses an optical scanning mark-sense reading device of  
11 any similar advanced technology to count ballots];

12 3. Data storage device – a device OR MEDIUM used to electronically  
13 store counting and canvassing results, such as, BUT NOT LIMITED TO,  
14 memory pack, [or] diskette, CD-ROMS, OPTICAL DISKS, OR ANY SIMILAR  
15 DEVICE;

16 X X X

17 5. National ballot – refers to the ballot [to be used in the automated  
18 election system for the purpose of the May 11, 1998 elections. This shall]  
19 containING the names of the candidates VOTED ON for THE POSITIONS OF

1 president, vice-president, senators and parties, organizations or coalitions  
2 participating under the party-list system INDICATING THE CHOICES OF  
3 THE VOTER TO BE USED EITHER FOR PURPOSES OF COUNTING OR  
4 AS PROOF OF VOTES ALREADY CAST; [This ballot shall be counted by the  
5 counting machine]

6 6. Local ballot – refers to the ballot [on which the voter will manually  
7 write] CONTAINING the names of the candidates [of his/her choice] VOTED  
8 ON FOR THE POSITIONS OF [for] memberS of the House of  
9 Representatives, governor, vice-governor, members of the provincial board,  
10 mayor, vice-mayor, and members of the city/municipal council INDICATING  
11 THE CHOICES OF THE VOTER TO BE USED EITHER FOR PURPOSES  
12 OF COUNTING OR AS PROOF OF VOTES ALREADY CASE; [For the  
13 purpose of the May 11, 1998 elections, this ballot will be counted manually]  
14 WHENEVER FEASIBLE, THE VOTES REFLECTED IN THESE BALLOTS  
15 MAY ALSO BE COUNTED USING THE MACHINES;

16 7. Board of Election Inspectors – there shall be a Board of Election  
17 Inspectors in every precinct composed of three (3) regular members who  
18 shall conduct the voting, counting and recording of votes in the polling place.

19 [For the purpose of the May 11, 1998 elections,] T[t]here shall be  
20 special members composed of a fourth member in each precinct and a  
21 COMELEC representative who is authorized to operate the counting machine.  
22 Both shall conduct the counting and recording of votes of the national ballots  
23 in the designated counting centers”

24 Sec. 2. Section 5 of Republic Act No. 8436 is hereby amended to read as follows:

25 “SEC. 5. Board of Canvassers. – [For purposes of the May 11, 1998  
26 elections,] E[e]ach province, city or municipality shall have two (2) board of  
27 canvassers, one for the [manual election system under the existing law]  
28 NATIONAL BALLOT, and the other, for the [automated system] LOCAL  
29 BALLOT. For the [automated election system] NATIONAL BALLOT, the  
30 chairman of the board shall be appointed by the Commission from among its  
31 personnel/deputies and the members from the officials enumerated in Section  
32 21 of Republic Act No. 6646.”

33 Sec. 3. Section 6 of Republic Act No. 8436 is hereby amended to read as follows:

1           “SEC. 6. Authority to Use an Automated Election System. – To carry  
2 out the above-stated policy, the Commission on Elections, herein referred to  
3 as the Commission, is hereby authorized to use an automated election  
4 system, herein referred to as the System, for the process of voting, counting  
5 of votes and canvassing/consolidation AND TRANSMISSION of results of the  
6 national and local elections, WHERE FEASIBLE]: Provided, however, That for  
7 the May 11, 1998 elections, the System shall be applicable in all areas within  
8 the country only for the positions of president, vice-president, senators and  
9 parties, organizations or coalitions participating under the party-list system.]

10           To achieve the purpose of this Act, the Commission is authorized to  
11 procure by purchase, lease or otherwise any supplies, equipment, materials  
12 and services needed for the holding of the elections by an expedited process  
13 of public bidding of vendors, suppliers or lessors: Provided, That the  
14 accredited political parties are duly notified of and allowed to observe but not  
15 to participate in the bidding. If, inspite of [its] diligent efforts to implement this  
16 mandate in the exercise of this authority, it becomes evident [by February 9,  
17 1998] that the Commission cannot fully implement the automated election  
18 system [for national positions in the May 11, 1998 elections,] THE  
19 COMMISSION IS HEREBY AUTHORIZED TO DETERMINE WHERE TO  
20 IMPLEMENT THE SYSTEM THROUGH MODULAR APPROACH ON A  
21 PHASE BY PHASE BASIS, INCLUDING THE OPTION OF IMPLEMENTING  
22 IT ON A MANUAL BASIS [the elections for both national and local positions  
23 shall be done manually except in the Autonomous Region in Muslim  
24 Mindanao (ARMM) where the automated election system shall be used for all  
25 positions.]”

26           Sec. 4. Section 7 of Republic Act No. 8436 is hereby amended to read as follows:

27           “SEC. 7. Features of the System. – The System shall utilize  
28 appropriate technology for voting, and electronic devices for counting of votes  
29 and canvassing of results. For this purpose, the Commission shall acquire  
30 BY PURCHASE, LEASE OR OTHERWISE automated counting machines,  
31 computer equipment, devices and materials and adopt new forms and printing  
32 materials WHENEVER NECESSARY.

1           The System shall contain PROVISIONS FOR SECURE ELECTRONIC  
2 TRANSMISSION OF ENCRYPTED ELECTION RESULTS, PROCESS AND  
3 DATA AUDIT TRAILS, AND SHALL BE ABLE TO DETECT FAKE,  
4 COUNTERFEIT AND PREVIOUSLY COUNTED BALLOTS [the following  
5 features: (a) use of appropriate ballots, (b) stand-alone machine which can  
6 count votes and an automated system which can consolidate the results  
7 immediately, (c) with provisions for audit trails, (d) minimum human  
8 intervention, and (e) adequate safeguard/security measures].

9           In addition, the System shall as far as practicable have the following  
10 features:

11           1. It must be user-friendly and need not require computer-literate  
12 operators;

13           2. The machine security must be built-in and multi-layer existent on  
14 hardware and software with minimum human intervention using latest  
15 technology like encrypted coding system;

16           3. The security key control must be embedded inside the machine  
17 sealed against human intervention;

18           [4. The Optical Mark Reader (OMR) must have a built-in printer for  
19 numbering the counted ballots and also for printing the individual precinct  
20 number on the counted ballots;

21           5. The ballot paper for the OMR counting machine must be of the  
22 quality that passed the international standard like ISO-1831, JIS-X- 9004 or  
23 its equivalent for optical character recognition;

24           6. The ballot feeder must be automatic;

25           7. The machine must be able to count from 100 to 150 ballots per  
26 minute;

27           8. The counting machine must be able to detect fake or counterfeit  
28 ballots and must have a fake ballot rejector;

29           9. The counting machine must be able to detect and reject previously  
30 counted ballots to prevent duplication;

31           10. The counting machine must have the capability to recognize the  
32 ballot's individual precinct and city or municipality before counting or  
33 consolidating the votes;]

1 [11] 4. The System must have a printer that has the capacity to print in  
2 one stroke or operation seven (7) copies (original plus six (6) copies) of the  
3 consolidated reports on carbonless paper;

4 [12] 5. The printer must have at least 128 kilobytes of Random Access  
5 Memory (RAM) to facilitate the expeditious processing of the printing of the  
6 consolidated reports;

7 [13] 6. The machine must have a built-in floppy disk drive in order to  
8 save the processed data on a diskette;

9 [14] 7. The machine must also have a built-in hard disk to store the  
10 counted and consolidated data for future printout and verification;

11 [15] 8. The machine must be temperature-resistant and rust-proof;

12 [16. The optical lens of the OMR must have a self-cleaning device;]

13 [17] 9. The machine must EMPLOY TECHNOLOGIES THAT WILL  
14 EFFECT A UNIVERSALLY VERIFIABLE AND PROVABLE VALIDITY OF  
15 ELECTIONS, BUT NOT LIMITED TO GENERATION OF DATA AND  
16 PROCESS AUDIT TRAILS [not be capable of being connected to external  
17 computer peripherals for the process of vote consolidation;]

18 [18] 10. The machine must have an Uninterrupted Power Supply  
19 (UPS);

20 [19] 11. The machine must be accompanied with operating manuals  
21 that will guide the personnel of the Commission the proper use and  
22 maintenance of the machine;

23 [20] 12. It must be so designed and built that add-ons may  
24 immediately be incorporated into the System at minimum expense;

25 [21] 13. It must provide the shortest time needed to complete the  
26 counting of votes and canvassing of the results of the election;

27 [22] 14. The machine must be able to generate consolidated reports  
28 like the election return, statement of votes and certificate of canvass at  
29 different levels; and

30 [23] 15. The accuracy of the count must be guaranteed, the margin of  
31 error must be disclosed and backed by warranty under such terms and  
32 conditions as may be determined by the Commission.]

1           In the procurement of this system, the Commission shall [adopt an  
2 equitable system of deductions or demerits for deviations or deficiencies] in  
3 meeting all the above stated features and standards, ENSURE THAT THE  
4 PROVISIONS OF REPUBLIC ACT NO 9184 ARE FAITHFULLY COMPLIED  
5 WITH.

6           For this purpose, the Commission shall create an Advisory Council to  
7 be composed of technical experts from the Department of Science and  
8 Technology (DOST), the Information Technology Foundation of the  
9 Philippines (ITFP), the University of the Philippines (UP), and two (2)  
10 representatives from the private sector recommended by the Philippine  
11 Computer Society (PCS). [The Council may avail itself of the expertise and  
12 services of resource persons of known competence and probity.]

13           MEMBERSHIP IN THE COUNCIL SHALL BE VETTED BY THE  
14 COMELEC FROM A SHORT-LIST OF THREE (3) NOMINEES, SUBMITTED  
15 BY EACH OF THE GROUPS TO BE REPRESENTED IN THE COUNCIL.  
16 THE COUNCIL MAY AVAIL ITSELF OF THE EXPERTISE AND SERVICES  
17 OF RESOURCE PERSONS OF KNOWN COMPETENCE AND PROBITY.

18           X X X"

19           Sec. 5. Section 8 of Republic Act No. 8436 is hereby amended to read as follows:

20           "SEC. 8. Procurement of Equipment and Materials. – The Commission  
21 shall procure, IN ACCORDANCE WITH REPUBLIC ACT NO. 9184, the  
22 automated counting machines, computer equipment, devices and materials  
23 needed for ballot printing and devices for voting, counting and canvassing  
24 from local or foreign sources free from taxes and import duties, subject to  
25 accounting and auditing rules and regulations.

26           SUBJECT TO THE PROVISIONS OF REPUBLIC ACT NO. 9184, THE  
27 BIDS AND AWARDS COMMITTEE FOR THE PROCUREMENT OF GOODS  
28 FOR THE MODERNIZATION OF THE ELECTORAL SYSTEM SHALL  
29 INCLUDE AS NON-VOTING MEMBERS ONE (1) REPRESENTATIVE EACH  
30 FROM THE INFORMATION TECHNOLOGY FOUNDATION OF THE  
31 PHILIPPINES (ITFP), THE DEPARTMENT OF SCIENCE AND  
32 TECHNOLOGY (DOST) AND THE DEPARTMENT OF FINANCE (DOF),

1 AND TWO (2) REPRESENTATIVES FROM THE PRIVATE SECTOR,  
2 NOMINATED BY THE ITFP AND VETTED BY THE COMMISSION."

3 Sec. 6. Section 11 of Republic Act No. 8436 is hereby amended to read as follows:

4 "SEC. 11. Official Ballot. – The Commission shall prescribe the size  
5 and form of the official ballot which shall contain the [titles of the positions to  
6 be filled] NAMES AND POSITIONS OF THE CANDIDATES TO BE VOTED  
7 UPON, and/or the propositions to be voted upon in an initiative, referendum  
8 or plebiscite. [Under each position,] T[t]he names of candidates TO BE  
9 VOTED UPON shall be arranged [alphabetically by surname and]  
10 ACCORDING TO POSITION, FROM PRESIDENT, VICE-PRESIDENT,  
11 SENATORS AND PARTY-LIST FOR NATIONAL ELECTIONS TO MEMBERS  
12 OF THE HOUSE OF REPRESENTATIVES, GOVERNOR, VICE-  
13 GOVERNOR, PROVINCIAL COUNCIL FOR LOCAL ELECTIONS uniformly  
14 printed using the same type size. A fixed space where the chairman of the  
15 Board of Election Inspectors shall affix his/her signature to authenticate the  
16 official ballot shall be provided.

17 X X X"

18 Sec. 7. *Repealing Clause.* – All laws, decrees, orders, rules and regulations or other  
19 issuances or parts thereof inconsistent with the provisions of this Act are hereby repealed or  
20 modified accordingly.

21 Sec. 8. *Separability Clause.* – If any portion or provision of this Act is declared  
22 unconstitutional, the remainder of this Act or any provisions not affected thereby shall  
23 remain in force and effect.

24 Sec. 9. *Effectivity.* – This Act shall take effect after fifteen (15) days following the  
25 completion of its publication either in the Official Gazette or in a newspaper of general  
26 circulation in the Philippines.

27 Approved,