

SENATE
S. No. 2003

'18 SEP 12 P 6:05

Introduced by **Senator Richard J. Gordon**

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AN ACT
FURTHER AMENDING REPUBLIC ACT NO. 8436, AS AMENDED BY
REPUBLIC ACT NO. 9369, AND OTHER RELATED ELECTIONS LAWS,
AND FOR OTHER PURPOSES

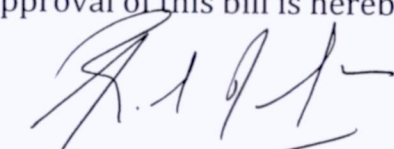
EXPLANATORY NOTE

This measure seeks to amend the technology-neutral automated election system mandated by Republic Act (R.A.) No. 8436, as amended by R.A. No. 9369, and instead mandate the use of a Direct-Recording Electronic (DRE) System in national and local elections.

This measure is intended to help make vote counting and result tabulation faster and more accurate and therefore increase confidence in the final results of the elections; eliminate human error associated with a paper-based election system; reduce costs needed for paper ballots and folders, among other paraphernalia; and, resolve voter access problems for those with disabilities or those using diverse Philippine dialects, even illiterate voters.

This measure furthermore seeks to relax the requirements imposed in R.A. No. 8436, as amended by R.A. No. 9369, to enable qualified Filipinos and Filipino corporations to participate and compete in the procurement process; require the Commission on Elections to donate the Automated Election System (AES) equipment used in the election to the Department of Education and the Commission on Higher Education for use in public schools, to enable greater utility and efficiency in the use of government resources; require the use of the Philippine Identification System to establish the identity of voters; require the electronic ballot to contain the photograph of the candidates; require the display of the results of the counting of votes for better access to the voters; and to establish a disputable presumption of omission of vote-buying or vote-selling when a voter verified paper audit trail or ballot belong to a voter is found in the possession of another.

In view of the foregoing, the immediate approval of this bill is hereby sought.


RICHARD J. GORDON
Senator



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FURTHER AMENDING REPUBLIC ACT NO. 8436, AS AMENDED BY
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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, as amended by Republic Act No.
2 9369, is hereby amended to read as follows:

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

5 1. Automated election system, hereinafter to as AES – a system
6 using appropriate technology which has been demonstrated in the
7 voting, counting, consolidating, canvassing, and transmission of
8 election result, and other electoral process;

9 2. Electronic transmission – conveying data in electronic form
10 from one location to other;

11 3. Official ballot – where AES is utilized, refers to the paper
12 ballot, whether printed or generated by the technology applied, that
13 faithfully captures or represents the votes cast by a voter recorded or
14 to be recorded in electronic form;

15 4. Election returns – a document in electronic and printed form
16 directly produced by the counting or voting machine, showing the date
17 of the election, the province, municipality and the precinct in which it is
18 held and the votes in figures for each candidate in a precinct in areas
19 where AES is utilized;

20 5. Statement of votes – a document containing the votes
21 obtained by candidates in each precinct in a city/municipality;

1 6. City/municipal/district/provincial certificate of canvass – a
2 document in electronic and printed form containing the total votes in
3 figures obtained by each candidate in a
4 city/municipality/district/province as the case may be. The electronic
5 certificates of canvass shall be the official canvass result in the
6 aforementioned jurisdictions;

7 [7. Paper-based election system – a type of automated election
8 system that use paper ballots, records and counts votes, tabulates,
9 consolidates/canvasses and transmits electronically the results of the
10 vote count;]

11 8. Direct recording electronic election system – a type or
12 automated election system that uses electronic ballots, records, votes
13 by means of a ballot display provided with mechanical or electro-
14 optical component that can be activated by the voter, processes data by
15 means of a computer programs, record voting data and ballot images,
16 and transmits voting results electronically;

17 9. Counting center – a public places within the city/municipality
18 or in such other places as may be designated by the Commission where
19 the official ballots cast in various precincts of the city/municipality
20 shall be counted. Polling places or voting centers may also be
21 designated as counting centers;

22 10. Continuity plan – a list of contingency measures, and the
23 policies for activation of such, that are put in place to ensure
24 continuous operation of the AES;

25 11. Disabled voters – a person with impaired capacity to use the
26 AES;

27 12. Source code – human readable instructions that define what
28 the computer equipment will do; and

29 13. Station- refers to a polling place, counting center, municipal
30 or provincial canvassing center.”

31 **SEC. 2.** Section 5 of Republic Act No. 8436, as amended by Republic Act No. 9369, is
32 hereby amended to read as follows:

33 “SEC. 5 Authority to Use an Automated Election System. – To
34 carry out the above-stated policy, the Commission on Elections, herein

1 referred to as the Commission, **SHALL USE** [is hereby authorized to use
2 an automated election system or systems in the same election in
3 different provinces, whether paper-based or] a direct recording
4 electronic election system as it may deem appropriate and practical for
5 the process of voting, counting of votes and canvassing/consolidation
6 and transmittal of results of electoral exercises: Provided, that for the
7 regular national and local election, which shall be held immediately
8 after effectivity of this Act, the AES shall be used in at least two highly
9 urbanized cities and two provinces each in Luzon, Visayas and
10 Mindanao, to be chosen by the Commission: Provided, further, That
11 local government units whose officials have been the subject of
12 administrative charges within sixteen (16) month prior to the May 14,
13 2007 election shall not be chosen: Provided, finally, That no area shall
14 be chosen without the consent of the Sanggunian of the local
15 government unit concerned. The term local government unit as used in
16 this provision shall refer to a highly urbanized city or province. In
17 succeeding regular national or local elections, the AES shall be
18 implemented nationwide.”

19 **SEC. 3.** Section 6 of Republic Act No. 8436, as amended by Republic Act No. 9369, is
20 hereby amended to read as follows:

21 “SEC.6. Minimum System Capabilities. - "The automated election
22 system must at least have the following functional capabilities:

23 (a) Adequate security against unauthorized access;

24 (b) Accuracy in recording and reading of votes as well as in the
25 tabulation, consolidation/canvassing, electronic transmission, and
26 storage of results;=

27 (c) Error recovery in case of non-catastrophic failure of device;

28 (d) System integrity which ensures physical stability and
29 functioning of the vote recording and counting process;

30 (e) Provision for voter verified paper audit trail;

31 (f) System auditability which provides supporting
32 documentation for verifying the correctness of reported election
33 results;

1 (g) An election management system for preparing ballots and
2 programs for use in the casting and counting of votes and to
3 consolidate, report and display election result in the shortest time
4 possible;

5 (h) Accessibility to illiterates and disable voters;

6 (i) Vote tabulating program for election, referendum or
7 plebiscite;

8 (j) Accurate ballot counters;

9 (k) Data retention provision;

10 (l) Provide for the safekeeping, storing and archiving of physical
11 or paper resource used in the election process;

12 (m) Utilize or generate official ballots as herein defined;

13 (n) Provide the voter a system of verification to find out whether
14 or not the machine has registered his choice; and

15 (o) Configure access control for sensitive system data and
16 function;

17 **(P) PROVISION FOR A SYSTEM TO USE THE PHILIPPINE**
18 **IDENTIFICATION SYSTEM TO ESTABLISH THE IDENTITY OF**
19 **VOTERS.**

20 In the procurement of this system, the Commission shall develop
21 and adopt an evaluation system to ascertain that the above minimum
22 system capabilities are met. This evaluation system shall be developed
23 with the assistance of an advisory council.”

24 **SEC. 4.** Section 12 of Republic Act No. 8436, as amended by Republic Act No. 9369, is
25 hereby amended to read as follows:

26 “SEC.12. Procurement of Equipment and Materials. – To achieve
27 the purpose of this Act, the Commission in authorized to procure, in
28 accordance with existing laws, by purchase, lease, rent or other forms
29 of acquisition, supplies, equipment, materials, software, facilities, and
30 other service, from local or foreign sources free from taxes and import
31 duties, subject to accounting and auditing rules and regulation. With
32 respect to the May 10, 2010 election and succeeding electoral
33 exercises, the system procured must have demonstrated capability
34 **DETERMINED IN ACCORDANCE WITH THE RULES ESTABLISHED**

1 BY THE COMMISSION IN CONSULTATION WITH THE DEPARTMENT
2 OF BUDGET AND MANAGEMENT, PROVIDED THAT THE
3 COMMISSION SHALL (1) GIVE PREFERENCE TO FILIPINO CITIZENS
4 OR TO CORPORATIONS AT LEAST SIXTY PERCENT OF THE
5 CAPITAL OF WHICH IS OWNED BY FILIPINO CITIZENS; AND (2)
6 INCLUDE INTO THE CRITERIA THE VALUE OF ANY ALTERNATIVE
7 USE TO WHICH THE TECHNOLOGY, SOFTWARE OR EQUIPMENT
8 CAN BE PUT FOR PUBLIC USE [and been successfully used in a prior
9 electoral exercise here or board]. Participation in the 2007 pilot
10 exercise shall not be conclusive of the system's fitness.

11 In determining the amount of any bid from a technology,
12 software or equipment supplier, the cost to the government of its
13 deployment and implementation shall be added to the bid price as
14 integral thereto. The value of any alternative use to which such
15 technology, software or equipment can be put for public use shall [not]
16 be deducted from the original face value of the said bid.

17 AFTER EVERY ELECTION, THE COMMISSION ON ELECTIONS
18 SHALL DONATE THE AES EQUIPMENT USED IN THE IMMEDIATELY
19 PRECEDING ELECTION TO THE DEPARTMENT OF EDUCATION, FOR
20 USE IN PUBLIC ELEMENTARY AND HIGH SCHOOLS AND LEARNING
21 CENTERS, AND THE COMMISSION ON HIGHER EDUCATION, FOR
22 USE IN STATE UNIVERSITIES AND COLLEGES. ”

23 **SEC. 5.** Section 15 of Republic Act No. 8436, as amended by Republic Act No. 9369, is
24 hereby amended to read as follows:

25 “SEC.15. Official Ballot. – The Commission shall prescribe the
26 format of the electronic display and/or the size and form of the official
27 ballot, which shall contain the titles of the position to be filled and/or
28 the proposition to be voted upon in an initiative, referendum or
29 plebiscite. Where practicable, electronic displays must be constructed
30 to present the names of all candidates for the same position in the
31 same page or screen, otherwise, the electronic displays must be
32 constructed to present the entire ballot to the voter, in a series of
33 sequential pages, and to ensure that the voter sees all of the ballot
34 options on all pages before completing his or her vote and to allow the

1 voter to review and change all ballot choices prior to completing and
2 casting his or her ballot. Under each position to be filled, the names of
3 candidates shall be arranged alphabetically by surname and uniformly
4 indicated using the same type size. The maiden or married name shall
5 be listed in the official ballot, as preferred by the female candidate.
6 Under each proposition to be vote upon, the choices should be
7 uniformly indicated using the same font and size.

8 **THE BALLOT SHALL CONTAIN THE CLEARLY IDENTIFIABLE**
9 **PHOTOGRAPH OF THE CANDIDATES.**

10 A fixed space where the chairman of the board of election
11 inspector shall affix her/her signature to authenticate the official ballot
12 shall be provided.

13 For this purpose, the Commission shall set the deadline for the
14 filing of certificate of candidacy/petition of registration/manifestation
15 to participate in the election. **NOTWITHSTANDING ANY PROVISION**
16 **OF LAW TO THE CONTRARY, THE PERIOD FOR FILING OF**
17 **CERTIFICATE OF CANDIDACY SHALL COMMENCE NOT EARLIER**
18 **THAN NINETY (90) DAYS BEFORE THE DAY OF THE ELECTION.** Any
19 person who files his certificate of candidacy within this period shall
20 [only] be considered as a candidate [at the start of the campaign period
21 for which he filed] **UPON FILING OF** his certificate of candidacy:
22 Provided, That, unlawful acts or omissions applicable to a candidate
23 shall effect only upon that start of the aforesaid [campaign] period:
24 Provided, finally, That any person holding a public appointive office or
25 position, including active members of the armed forces, and officers,
26 and employees in government-owned or-controlled corporations, shall
27 be considered ipso facto resigned from his/her office and must vacate
28 the same at the start of the day of the filing of his/her certification of
29 candidacy.

30 Political parties may hold political conventions to nominate their
31 official candidate within thirty (30) days before the start of the period
32 for filing certificate of candidacy.

33 [With respect to a paper-based election system, the official
34 ballots shall be printed by the National Printing Office and/or the

1 Bangko Sentral ng Pilipinas at the price comparable with that of private
2 printers under proper security measures which the Commission shall
3 adopt. The Commission may contact the services of private printers
4 upon certification by the National Printing Office/Bangko Sentral ng
5 Pilipinas that it cannot meet the printing requirements. Accredited
6 political parties and deputized citizen's arms of the Commission shall
7 assign watchers in the printing, storage and distribution of official
8 ballots.]

9 [To prevent the use of fake ballots, the Commission through the
10 Committee shall ensure that the necessary safeguards, such as, but not
11 limited to, bar codes, holograms, color shifting ink, microprinting, are
12 provided on the ballot.]

13 [The official ballots shall be printed and distributed to each
14 city/municipality at the rate of one ballot for every registered voter
15 with a provision of additional three ballots per precinct.”]

16 **SEC. 6.** Section 22 of Republic Act No. 8436, as amended by Republic Act No. 9369, is
17 hereby amended as follows:

18 “SEC. 22. Electronic Returns. - Each copy of the printed election
19 returns shall bear appropriate control marks to determine the time and
20 place of printing. Each copy shall be signed and thumbmarked by all
21 the members of the board of election inspectors and the watchers
22 present. If any member of the board of election inspectors present
23 refuses to sign, the chairman of the board shall note the same copy in
24 each copy of the printed election returns. The member of the board of
25 election inspectors concerned refusing to sign shall be compelled to
26 explain his or her refusal to do so. Failure to explain an unjustifiable
27 refusal to sign each copy of the printed election return by any member
28 of the board of election inspectors shall be punishable as provided in
29 this Act. The chairman of the boards shall then publicly read and
30 announce the total numbers of registered voters, the total number of
31 voters who actually voted and the total numbers of votes obtained by
32 each candidate based on the election returns.

33 Thereafter, the copies of the election returns shall be sealed and
34 placed in the proper envelopes for distribution as follows:

1 A. In the election of president, vice-president, senators and
2 party-list system;

3 1) The first copy shall be delivered to the city or municipal board
4 of canvassers;

5 2) The second copy, to the congress, directed to the President of
6 the Senate;

7 3) The third copy, to the commission;

8 4) The fourth copy, to the citizen's arm authorized by the
9 Commission to conduct an unofficial count

10 5) The fifth copy, to the dominant majority party as determined
11 by the Commission in accordance with law;

12 6) The six copy, to the dominant minority party as determined
13 by the Commission in accordance with law; and

14 7) The seventh copy shall be deposited inside the compartment
15 of the ballot box for valid ballots.

16 8) The eight copy to the Provincial Board of canvassers;

17 9) The ninth to the eighteenth copies, shall be given to the ten
18 (10) accredited major national parties, excluding the dominant
19 majority and minority parties, in accordance with a voluntary
20 agreement among them. If no such agreement is reached, the
21 Commission shall decide which parties shall receive the copies on the
22 basis of the criteria provided in Section 26 of Republic Act No. 7166;

23 10) The nineteenth and twentieth copies, to the two accredited
24 major local parties in accordance with a voluntary agreement among
25 them. If no such agreement is reached, the commission shall decide
26 which parties shall receive the copies on the basis of criteria analogous
27 to that provided in Section 26 of Republic Act No. 7166;

28 11) The twenty-first to the twenty-fourth copies, to national
29 broadcast or print media entities as may be equitably determined by
30 the Commission in view of propagating the copies to the widest extent
31 possible;

32 12) The twenty-fifth and twenty-six copies, to local broadcast or
33 print media entities as may be equitably determined by the

1 Commission in view of propagating the copies to the widest extent
2 possible; and

3 13) The twenty-seventh to the thirtieth copies, to the major
4 citizen's arms, including the accredited citizen's arm, and other non-
5 partisan groups or organization enlisted by the Commission pursuant
6 to Section 52(k) of Batas Pambansa Blg. 881. Such citizens' arm, groups
7 and organization may use the four certified copies of election returns
8 for the conduct of citizens' quick counts at the local or national levels;

9 B. In the election of local officials and members of the House of
10 Representatives:

11 1) The First copy shall be delivered to the city or municipal
12 board of canvassers;

13 2) The second copy, to the Commission;

14 3) The third copy, to the provincial board of canvassers;

15 4) The fourth copy, to the citizens' arm authorized by the
16 Commission to conduct an unofficial count;

17 5) The fifth copy, to the dominant majority party as determined
18 by the Commission in accordance with law;

19 6) The sixth copy, to the dominant minority party as determined
20 by the Commission in accordance with law; and

21 7) The seventh copy shall be deposited inside the copy shall
22 deposited inside the compartment of the ballot box for valid ballots.

23 8) The eight copy to be posted conspicuously on a wall within
24 the premises of the polling place or counting center;

25 9) The ninth to the eighteenth copies, shall be given to the ten
26 (10) accredited major national parties, excluding the dominant
27 majority and minority parties, in accordance with a voluntary
28 agreement among them. If no such agreement is reached, the
29 Commission shall decide which parties shall receive the copies on the
30 basis of the criteria provided in Section 26 of Republic Act No. 7166;

31 10) The nineteenth and twentieth copies shall be given to the
32 two accredited major local parties in accordance with a voluntary
33 agreement among them. If no such agreement is reached, the
34 Commission shall decide which parties shall receive the copies on the

1 basis of criteria analogous to that provided in Section 26 of republic Act
2 No. 7166;

3 11) The twenty-first to the twenty-fifth copies, to national
4 broadcast or print media entities as may be equitably determined by
5 the Commission in view of propagating the copies to the widest extent
6 possible;

7 12) The twenty-sixth and twenty-seventh copies, to local
8 broadcast or print media entities as may be equitably determined by
9 the Commission in view of propagating the copies to the widest extent
10 possible; and

11 13) The twenty-eighth to the thirtieth copies to the major
12 citizens' arms, including the accredited citizens' arm, and other non-
13 partisan groups or organization enlisted by the Commission pursuant
14 to section 52(k) of Batas Pambansa Blg. 881. Such citizens' arms,
15 groups and organization may use the five certified copies of election
16 returns for the conduct of citizens' quick counts at the local or national
17 levels.

18 Immediately after the eight copy is printed, the poll clerk shall
19 announce the posting of said copy on a wall within the premises of the
20 polling place or counting center, which must be sufficiently lighted and
21 accessible to the public. **FURTHERMORE, THE POLL CLERK SHALL,**
22 **BY THE USE OF AN IMAGE PROJECTOR OR IMAGE SCREEN, CAUSE**
23 **THE CLEAR, LEGIBLE AND ACCURATE DISPLAY OF THE RESULTS**
24 **OF THE COUNTING OF VOTES INSIDE THE POLLING PRECINCT OR**
25 **COUNTING CENTER.** Any person may view or capture an image of the
26 election return **OR THE DISPLAYED IMAGE OF THE COUNTING**
27 **RESULTS** by means of any data capturing device such as, but not
28 limited to cameras at any time of the day for forty-eight (48) hours
29 following its posting. After such period, the chairman of the board of
30 election inspectors shall detach the election return from the wall and
31 keep the same in his custody to be produced as may be requested by
32 any voter for image or data capturing or for any lawful purpose as may
33 be ordered by competent authority.

1 Within one hour after the printing of the election returns, the
2 chairman of the board of election inspectors or any official authorized
3 by the Commission shall, in the presence of watchers and
4 representatives of the accredited citizens' arm, political
5 parties/candidates, if any, electronically transmit the precinct results
6 to the respective levels of board of canvassers, to the dominant
7 majority and minority party, to the accredited citizen's arm, and to the
8 Kapisanan ng mga Brodcaster ng Pilipinas (KBP).

9 The election results at the city/municipality canvassing centers
10 shall be transmitted in the same manner by the election officer or any
11 official authorized by the commission to the district or provincial
12 canvassing centers.

13 The election returns transmitted electronically and digitally
14 signed shall be considered as official election results and shall be used
15 as the basis for the canvassing of votes and the proclamation of a
16 candidate.

17 After the electronic results have been transmitted additional
18 copies not to exceed thirty (30) may be printed and given to requesting
19 parties at their own expense.”

20 **SEC. 7.** Section 35 of Republic Act No. 8436, as amended by Republic Act No. 9369, is
21 hereby amended to read as follows:

22 “SEC. 35. Prohibited Acts and Penalties. – The following shall be
23 penalized as provided in this Act, whether or not said acts affect the
24 electoral process or results:

25 (a) Utilizing without authorization, tampering with, damaging,
26 destroying or stealing:

27 (1) Official ballots, election returns, and certificates
28 of canvass of votes used in the system; and

29 (2) Electronic devices or their components,
30 peripherals or supplies used in the AES such as counting
31 machine, memory pack/diskette, memory pack receiver
32 and computer set;

33 (b) Interfering with, impeding, absconding for purpose of gain,
34 preventing the installation or use of computer counting devices and the

1 processing, storage, generation and transmission of election results,
2 data or information;

3 (c) Gaining or causing access to using, altering, destroying or
4 disclosing any computer data, program, system software, network, or
5 any computer-related devices, facilities, hardware or equipment,
6 whether classified or declassified;

7 (d) Refusal of the citizens' arm to present for perusal its copy of
8 election return to the board of canvassers;

9 (e) Presentation by the citizens' arm of tampered or spurious
10 election returns;

11 (f) Refusal or failure to provide the dominant majority and
12 dominant minority parties or the citizens' arm their copy of election
13 returns; and

14 (g) The failure to post the voters' list within the specified time,
15 duration and in the designated location shall constitute an election
16 offense on the part the election officer concerned.

17 **WHERE THE VOTER VERIFIED PAPER AUDIT TRAIL OR**
18 **BALLOT BELONGING TO A VOTER IS FOUND IN THE POSSESSION**
19 **OF ANOTHER, THE SAME SHALL CONSTITUTE A DISPUTABLE**
20 **PRESUMPTION OF THE COMMISSION OF SAID PERSONS OF VOTE-**
21 **BUYING AND VOTE-SELLING, AS THE CASE MAY BE, AS DEFINED**
22 **AND PUNISHED UNDER THE OMNIBUS ELECTION CODE AND**
23 **OTHER ELECTION LAWS.**

24 Any person convicted for violation of this Act, except those
25 convicted of the crime of electoral sabotage, shall be penalized with
26 imprisonment of eight years and one day to twelve (12) years without
27 possibility of parole, and perpetual disqualification to hold public office
28 and deprivation of the right of suffrage. Moreover, the offender shall be
29 perpetually disqualified to hold any non-elective public office."

Approved,