

SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)



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SENATE
S. B. No. 2206

RECEIVED

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Introduced by Senator Aquilino “Koko” Pimentel III

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, TO
ENCOURAGE TRANSPARENCY, CREDIBILITY, FAIRNESS
AND ACCURACY OF ELECTIONS, AMENDING FOR THE
PURPOSE BATAS PAMBANSA BLG. 881, AS AMENDED,
REPUBLIC ACT NO. 7166 AND OTHER RELATED ELECTION
LAWS, PROVIDING FUNDS THEREFOR AND FOR OTHER
PURPOSES”, AS AMENDED

EXPLANATORY NOTE

A COMELEC Advisory Council was created by Republic Act No. 9369, the law that amended R.A. 8436, or the Automated Election System (AES) Law. One of the more important functions of this Advisory Council is to recommend the most appropriate, secure, applicable and cost-effective technology to be applied in the AES.

The amendments proposed in this bill are taken from the recommendations of the Advisory Council in its CAC Resolution No. 2018-001¹ submitted to the Joint Congressional Oversight Committee on Automated Election System, as follows:

¹ Dated 18 June 2018.

- 1) In the definition of *automated election system*, the clause “*which has been demonstrated in the voting, counting, consolidating, canvassing, and transmission of election results*” is proposed to be replaced with “*with proven capability to perform the counting of votes and other electoral processes*” to allow the entry of other AES solution providers to participate in the National and Local Elections (NLE)²;
- 2) The amendment in Section 6 (l) of the law reflects the fact that national and local electoral exercises use not only paper resources but also digital resources³;
- 3) The membership of the Technical Evaluation Committee (TEC) enumerated in the law is proposed to be amended by replacing the membership of COMELEC with a representative from the academe, information and communications technology (ICT) group, or citizens’ arm, while still mandating the COMELEC to provide full support to the TEC⁴;
- 4) The requirement of an international certification for an AES is proposed to be changed to any qualified certification entity thus allowing local certification entities to participate and conduct the certification processes needed for the AES. It also proposes to omit the clause “*not later than 3 months before the date of the electoral exercise*” since, by experience, there has been no compliance with this requirement due to factors beyond the control of concerned stakeholders⁵;
- 5) The reference of prior electoral exercises in Section 12 of the law on procurement of equipment and materials is proposed to be deleted thus allowing a system that complies with the specifications to be determined by the COMELEC to be eligible to participate⁶; and
- 6) For the conduct of the source code review, the word “*promptly*” is proposed to be replaced with a specific time frame of “*thirty (30) calendar days from the signing of the contract*” with the winning bidder⁷.

² Item 1, CAC Resolution No. 2018-001.

³ *Id.* at Item 3, page 3.

⁴ *Id.* at Item 5, page 3.

⁵ *Id.* at Item 6, page 4.

⁶ *Id.* at Item 2, page 2.

⁷ *Id.* at Item 7, page 4.

With these amendments, it is hoped that our AES will be closer to the vision of the Constitution of a free, orderly, honest, peaceful, credible, and informed elections.

For these reasons, passage of this measure is earnestly sought.


AQUILINO "KOKO" PIMENTEL III

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

1 **SECTION 1.** Section 2 of Republic Act No. 8436, as amended by
2 Republic Act No. 9369, is hereby further amended to read as follows:

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

1 "1. Automated election system, hereinafter referred to
2 as AES - a system using appropriate technology [which has
3 been demonstrated in the voting, counting, consolidating,
4 canvassing, and transmission of election results,] **WITH**
5 **PROVEN CAPABILITY TO PERFORM THE**
6 **COUNTING OF VOTES** and other electoral processes;

7 xxxxx

8
9 **SEC. 2.** Section 6 (l) of Republic Act No. 8436, as amended by
10 Republic Act No. 9369, is hereby further amended to read as follows:

11
12 "SEC.6. *Minimum System Capabilities.* - "The
13 automated election system must at least have the following
14 functional capabilities:

15 xxxxx

16 (l) Provide for the safekeeping, storing and archiving
17 of physical [or] paper, **DIGITAL OR OTHER** resourceS
18 used in the election process;

19 xxxxx

20
21 **SEC. 3.** - Section 8 (a) of Republic Act No. 8436, as amended by
22 Republic Act No. 9369, is hereby further amended to read as follows:

23 "SEC.8. *The Advisory Council.* -xxxxxx

24 "(a) The [Chairman of the Commission on]
25 **SECRETARY OF THE DEPARTMENT OF**
26 Information and Communications Technology [(CICT)]
27 **DICT** who shall act as the chairman of the council;

28
29 **SEC. 4.** - Section 10 of Republic Act No. 8436, as amended by
30 Republic Act No. 9369, is hereby further amended to read as follows:

31 "SEC. 10. *The Technical Evaluation Committee.* - The
32 Commission, in collaboration with the chairman of the
33 Advisory Council, shall establish an independent technical

1 evaluation committee, herein known as the Committee,
2 composed of [a] **ONE** representative each from the
3 [Commission, the Commission on Information and
4 Communications Technology and the] Department of
5 Science and Technology, who shall act as Chairman of the
6 Committee, **THE DEPARTMENT OF INFORMATION**
7 **AND COMMUNICATIONS TECHNOLOGY, AND**
8 **FROM THE ACADEME, INFORMATION AND**
9 **COMMUNICATIONS TECHNOLOGY (ICT)**
10 **INDUSTRY GROUP, OR THE CITIZENS' ARM.**
11 **THE COMMISSION SHALL PROVIDE FULL**
12 **SUPPORT NEEDED BY THE COMMITTEE IN**
13 **FULFILLING ITS ACTIVITIES.**

14 "The Committee shall be immediately convened
15 within ten (10) days after the effectivity of this Act."

16
17 **SEC. 5.** -Section 11 of Republic Act No. 8436, as amended by
18 Republic Act No. 9369, is hereby further amended to read as follows:

19 "SEC. 11. *Functions of the Technical Evaluation*
20 *Committee.* - The Committee shall certify, through [an
21 established international] **A QUALIFIED** certification
22 entity to be chosen by the Commission from the
23 recommendations of the Advisory Council, [not later than
24 three months before the date of the electoral exercises,]
25 categorically stating that the AES, including its hardware
26 and software components, is operating properly, securely,
27 and accurately, in accordance with the provisions of this
28 Act based, among others, on the following documented
29 results:

30 xxxxx

31 **SEC. 6.** – Section 12 of Republic Act No. 8436, as amended by
32 Republic Act No. 9369, is hereby further amended to read as follows:

33 "SEC.12. *Procurement of Equipment and Materials.* -
34 To achieve the purpose of this Act, the Commission is
35 authorized to procure, in accordance with existing laws, by
36 purchase, lease, rent or other forms of acquisition, supplies,
37 equipment, materials, software, facilities and other

1 services, from local or foreign sources free from taxes and
2 import duties, subject to accounting and auditing rules and
3 regulations. [With respect to the May 10, 2010 elections
4 and succeeding electoral exercises, the] **THE** system
5 procured must have [demonstrated] **PROVEN** capability
6 [and been successfully used in a prior electoral exercise
7 here or abroad. Participation in the 2007 pilot exercise shall
8 not be conclusive of the system's fitness], **WITH**
9 **SPECIFICATIONS TO BE DETERMINED BY THE**
10 **COMMISSION AS IT DEEMS APPROPRIATE AND**
11 **PRACTICAL FOR THE PROCESS OF VOTING,**
12 **COUNTING OF VOTES,**
13 **CANVASSING/CONSOLIDATION, AND**
14 **TRANSMITTAL OF RESULTS OF ELECTORAL**
15 **EXERCISES.**

16 XXXXX

17 **SEC. 7.-** Section 14 of Republic Act No. 8436, as amended by
18 Republic Act No. 9369, is hereby further amended to read as follows:

19 "SEC.14. *Examination and Testing of Equipment or*
20 *Device of the AES and Opening of the Source Code for*
21 *Review.* -XXXXXX

22 XXXXX

23 XXXXX

24 XXXXX

25 "Once an AES technology is selected for
26 implementation, the Commission shall [promptly],
27 **WITHIN THIRTY (30) CALENDAR DAYS FROM**
28 **THE SIGNING OF THE CONTRACT,** make the source
29 code of that technology available and open to any
30 interested political party or groups which may conduct
31 their own review thereof."

32 **SEC. 8. *Implementing Rules and Regulations.*** – The Commission
33 shall promulgate the implementing rules and regulations of this Act
34 within ninety (90) days from its effectivity.
35

1 **SEC. 9. *Separability Clause.*** – Should any provision of this Act or
2 part hereof be declared unconstitutional, the other provisions or parts not
3 affected thereby shall remain valid and effective.
4

5 **SEC. 10. *Repealing Clause.*** – Any law, presidential decree or
6 issuance, executive order, letter of instruction, or rule or regulation
7 inconsistent with the provisions of this Act is hereby repealed modified
8 accordingly.
9

10 **SEC. 11. *Effectivity.*** –This Act shall take effect fifteen (15) days
11 after its complete publication in the Official Gazette or in two (2)
12 newspapers of general circulation.
13

Approved,