

As Introduced

**132nd General Assembly
Regular Session
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H. B. No. 467

Representative Clyde

**Cosponsors: Representatives Ingram, Smith, K., Galonski, Reece, Boggs, Lepore-
Hagan, West, Leland**

A BILL

To amend sections 3505.21, 3506.02, 3506.07, 1
3506.19, 3506.21, and 3506.22 and to enact 2
sections 3505.331 and 3506.022 of the Revised 3
Code, and to amend sections 3506.05 and 3506.10 4
and to repeal section 3506.22 of the Revised 5
Code on January 1, 2019, to require the boards 6
of elections to conduct audits of election 7
results and, beginning in 2019, to use only 8
voting equipment that produces voter marked and 9
voter verified paper ballots. 10

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

Section 1. That sections 3505.21, 3506.02, 3506.07, 11
3506.19, 3506.21, and 3506.22 be amended and sections 3505.331 12
and 3506.022 of the Revised Code be enacted to read as follows: 13

Sec. 3505.21. (A) As used in this section ~~7~~: 14

(1) "~~during~~ During the casting of the ballots" includes 15
any time during which a board of elections permits an elector to 16
vote an absent voter's ballot in person at the office of the 17

board and any time ballots may be cast in a precinct polling 18
place on the day of an election. 19

(2) "During the counting of the ballots" includes any time 20
during which the election officials count and tally ballots, 21
make the official canvass of election returns, or conduct an 22
audit under section 3505.331 of the Revised Code. 23

(B) At any primary, special, or general election, any 24
political party supporting candidates to be voted upon at such 25
election and any group of five or more candidates may appoint to 26
the board of elections or to any of the precincts in the county 27
or city one person, a qualified elector, who shall serve as 28
observer for such party or such candidates during the casting of 29
the ballots and during the counting of the ballots; provided 30
that separate observers may be appointed to serve during the 31
casting and during the counting of the ballots. No candidate, no 32
uniformed peace officer as defined by section 2935.01 of the 33
Revised Code, no uniformed state highway patrol trooper, no 34
uniformed member of any fire department, no uniformed member of 35
the armed services, no uniformed member of the organized 36
militia, no person wearing any other uniform, and no person 37
carrying a firearm or other deadly weapon shall serve as an 38
observer, nor shall any candidate be represented by more than 39
one observer at any one precinct or at the board of elections 40
except that a candidate who is a member of a party controlling 41
committee, as defined in section 3517.03 of the Revised Code, 42
may serve as an observer. 43

(C) Any political party or group of candidates appointing 44
observers shall notify the board of elections of the names and 45
addresses of its appointees and the precincts at which they 46
shall serve or that they will serve at the board of elections. 47

Notification of observers appointed to serve on the day of an 48
election shall take place not less than eleven days before the 49
day of the election on forms prescribed by the secretary of 50
state and may be amended by filing an amendment with the board 51
of elections at any time until four p.m. of the day before the 52
election. Notification of observers appointed to serve at the 53
office of the board during the time absent voter's ballots may 54
be cast in person shall take place not less than eleven days 55
before absent voter's ballots are required to be ready for use 56
pursuant to section 3509.01 of the Revised Code on forms 57
prescribed by the secretary of state and may be amended by 58
filing an amendment with the board of elections at any time 59
until four p.m. of the day before the observer is appointed to 60
serve. The observer serving on behalf of a political party shall 61
be appointed in writing by the chairperson and secretary of the 62
respective controlling party committee. Observers serving for 63
any five or more candidates shall have their certificates signed 64
by those candidates. Observers appointed to a precinct may file 65
their certificates of appointment with the voting location 66
manager of the precinct at the meeting on the evening prior to 67
the election, or with the voting location manager of the 68
precinct on the day of the election. Observers appointed to the 69
office of the board to observe the casting of absent voter's 70
ballots in person prior to the day of the election may file 71
their certificates with the director of the board of elections 72
the day before or on the day that the observers are scheduled to 73
serve at the office of the board. 74

Upon the filing of a certificate, the person named as 75
observer in the certificate shall be permitted to be in and 76
about the applicable polling place during the casting of the 77
ballots and shall be permitted to watch every proceeding of the 78

precinct election officials from the time of the opening until 79
the closing of the polls. The observer also may inspect the 80
counting of all ballots in the polling place or board of 81
elections from the time of the closing of the polls until the 82
counting is completed and the final returns are certified and 83
signed. Observers appointed to serve at the board of elections 84
on the day of an election under this section may observe at the 85
board of elections and may observe at any precinct in the 86
county. The precinct election officials shall protect such 87
observers in all of the rights and privileges granted to them by 88
Title XXXV of the Revised Code. 89

(D) No persons other than the precinct election officials, 90
the observers, a police officer, other persons who are detailed 91
to any precinct on request of the board of elections, or the 92
secretary of state or the secretary of state's legal 93
representative shall be admitted to the polling place, or any 94
room in which a board of elections is counting ballots, after 95
the closing of the polls until the counting, certifying, and 96
signing of the final returns of each election have been 97
completed. 98

(E) Not later than four p.m. of the twentieth day prior to 99
an election at which questions are to be submitted to a vote of 100
the people, any committee that in good faith advocates or 101
opposes a measure may file a petition with the board of any 102
county asking that the petitioners be recognized as the 103
committee entitled to appoint observers to the count at the 104
election. If more than one committee alleging themselves to 105
advocate or oppose the same measure file such a petition, the 106
board shall decide and announce by registered mail to each 107
committee not less than twelve days immediately preceding the 108
election which committee is recognized as being entitled to 109

appoint observers. The decision shall not be final, but any 110
aggrieved party may institute mandamus proceedings in the court 111
of common pleas of the county in which the board has 112
jurisdiction to compel the precinct election officials to accept 113
the appointees of such aggrieved party. Any such recognized 114
committee may appoint an observer to the count in each precinct. 115
Committees appointing observers shall notify the board of 116
elections of the names and addresses of its appointees and the 117
precincts at which they shall serve. Notification shall take 118
place not less than eleven days before the election on forms 119
prescribed by the secretary of state and may be amended by 120
filing an amendment with the board of elections at any time 121
until four p.m. on the day before the election. A person so 122
appointed shall file the person's certificate of appointment 123
with the voting location manager in the precinct in which the 124
person has been appointed to serve. Observers shall file their 125
certificates before the polls are closed. In no case shall more 126
than six observers be appointed for any one election in any one 127
precinct. If more than three questions are to be voted on, the 128
committees which have appointed observers may agree upon not to 129
exceed six observers, and the precinct election officials shall 130
appoint such observers. If such committees fail to agree, the 131
precinct election officials shall appoint six observers from the 132
appointees so certified, in such manner that each side of the 133
several questions shall be represented. 134

(F) No person shall serve as an observer at any precinct 135
or at the board of elections unless the board of elections of 136
the county in which such observer is to serve has first been 137
notified of the name, address, and location at which such 138
observer is to serve. Notification to the board of elections 139
shall be given by the political party, group of candidates, or 140

committee appointing such observer as prescribed in this 141
section. No such observers shall receive any compensation from 142
the county, municipal corporation, or township, and they shall 143
take the following oath, to be administered by one of the 144
precinct election officials: 145

"You do solemnly swear that you will faithfully and 146
impartially discharge the duties as an official observer, 147
assigned by law; that you will not cause any delay to persons 148
offering to vote; and that you will not disclose or communicate 149
to any person how any elector has voted at such election." 150

Sec. 3505.331. (A) After declaring the official results of 151
a general election or a presidential primary election, the board 152
of elections shall conduct an audit of those results in 153
accordance with this section. The board may conduct an audit of 154
the official results of any other election in accordance with 155
this section. Except as otherwise provided in this division, the 156
board shall begin the audit not earlier than six business days 157
after it declares the official results and shall complete the 158
audit not later than the twenty-first day after it declares the 159
official results. If the board conducts a recount under Chapter 160
3515. of the Revised Code, the board shall begin the audit 161
immediately after the board certifies the results of the recount 162
and shall complete the audit not later than the fourteenth day 163
after it certifies the results of the recount. 164

(B) The board shall conduct the audit in accordance with 165
procedures prescribed by the secretary of state, which shall 166
require all of the following: 167

(1) The board shall audit not less than three contested 168
racess, questions, or issues, as directed by the secretary of 169
state. If fewer than three contested races, questions, or issues 170

appear on the ballot at the election, then the board shall audit 171
every contested race, question, and issue. In any election, 172
every contested race, question, or issue shall be eligible to be 173
audited. 174

(2) Every ballot that was included in the canvass of the 175
election returns shall be eligible to be audited, including 176
regular ballots cast on the day of the election, absent voter's 177
ballots, and provisional ballots. 178

(3) The board shall conduct the audit using either a risk- 179
limiting audit protocol in accordance with division (B) (3) (a) of 180
this section or a percentage-based audit protocol in accordance 181
with division (B) (3) (b) of this section. 182

(a) A risk-limiting audit protocol shall use statistical 183
methods to limit to acceptable levels the risk of certifying an 184
incorrect outcome for a particular race, question, or issue. The 185
protocol shall require bipartisan teams of election officials to 186
physically examine and hand count randomly sampled ballots and 187
to continue the hand counting until the results of the hand 188
count provide sufficiently strong evidence that a hand count of 189
all of the ballots would confirm the declared election result or 190
until all of the ballots have been hand counted, whichever 191
occurs first. 192

(b) (i) A percentage-based audit protocol shall require 193
bipartisan teams of election officials to physically examine and 194
hand count a number of randomly sampled ballots equal to a given 195
percentage of the total number of ballots cast in the county at 196
that election, as prescribed by the secretary of state. After 197
the election officials complete the initial audit, the board 198
shall calculate the accuracy rate of each audited race, 199
question, or issue by dividing the sum of any discrepancies for 200

the race, question, or issue discovered during the audit by the 201
total number of ballots audited for the race, question, or issue 202
and subtracting the resulting number from one hundred. 203

(ii) If the accuracy rate for an audited race, question, 204
or issue is less than the acceptable accuracy rate prescribed by 205
the secretary of state, the board shall escalate the audit of 206
that race, question, or issue by requiring bipartisan teams of 207
election officials to physically examine and hand count a second 208
set of randomly sampled ballots equal to a given percentage of 209
the total number of ballots cast in the county at that election, 210
as prescribed by the secretary of state. The second set of 211
ballots shall not include any ballots that were included in the 212
first set of audited ballots. After the election officials have 213
counted the second set of ballots, the board shall calculate the 214
combined accuracy rate for both audited sets of ballots for that 215
race, question, or issue. 216

(C)(1) The board shall give public notice of the times and 217
places for preparing for and conducting the audit in accordance 218
with section 121.22 of the Revised Code. Subject to division (C) 219
(2) of this section, at all times while the board prepares for 220
and conducts the audit, the board shall permit observers 221
appointed under section 3505.21 of the Revised Code, 222
representatives of the news media, and members of the general 223
public to observe the audit and to inspect public records that 224
are relevant to the audit. 225

(2)(a) No person other than a member of the board or a 226
designated employee of the board shall be permitted to handle a 227
ballot. 228

(b) If the board determines that it is necessary to limit 229
the number of persons who may observe the audit because of 230

physical space or other practical constraints, the board may 231
limit the number of members of the general public who may be 232
present, in accordance with procedures prescribed by the 233
secretary of state. The board shall not prevent any observer 234
appointed under section 3505.21 of the Revised Code or any 235
representative of the news media from observing the audit. 236

(D) (1) Not later than five days after completing the 237
audit, the board shall certify the results of the audit to the 238
secretary of state in the form and by the method prescribed by 239
the secretary of state. The secretary of state shall make the 240
results of the audit available to the public on the secretary of 241
state's official web site. 242

(2) If the board conducted a percentage-based audit and 243
was required to escalate the audit of a race, question, or issue 244
under division (B) (3) (b) (ii) of this section, and the combined 245
accuracy rate for that race, question, or issue is less than the 246
acceptable combined accuracy rate prescribed by the secretary of 247
state, the secretary of state may require the board to order 248
bipartisan teams of election officials to physically examine and 249
hand count all ballots cast in that race, question, or issue. 250
The requirements of division (C) of this section apply to any 251
full hand count conducted under this division. 252

(3) If the results of the completed audit or the results 253
of any full hand count ordered under division (D) (2) of this 254
section indicate that the canvass or the previously declared 255
official election results must be amended, the board promptly 256
shall amend the canvass or issue an amended declaration of the 257
official results, as applicable. 258

(E) (1) Except as otherwise provided in division (E) (2) of 259
this section, as used in this section, "ballot" means a voter 260

<u>marked and voter verified paper ballot, as defined in section</u>	261
<u>3506.022 of the Revised Code.</u>	262
<u>(2) For purposes of an audit of the official results of an</u>	263
<u>election held before January 1, 2019, "ballot" means either a</u>	264
<u>paper ballot or the relevant entry on a voter verified paper</u>	265
<u>audit trail, as defined in section 3506.01 of the Revised Code.</u>	266
Sec. 3506.02. Voting Subject to section 3506.022 of the	267
Revised Code, voting machines, marking devices, and automatic	268
tabulating equipment may be adopted for use in elections in any	269
county in the following manner:	270
(A) By the board of elections;	271
(B) By the board of county commissioners of such county on	272
the recommendation of the board of elections;	273
(C) By the affirmative vote of a majority of the electors	274
of such county voting upon the question of the adoption of such	275
equipment in such county.	276
If a petition signed by electors equal in number to two	277
per cent of the total votes cast in the county for the office of	278
governor at the most recent general election for that office is	279
filed with the board of elections, such board shall submit to	280
the electors of such county at the next general election	281
occurring not less than ninety days thereafter the question	282
"Shall voting machines, marking devices, and automatic	283
tabulating equipment be adopted in the county	284
of	285
of" Upon the filing of such petition,	286
the board of elections shall forthwith notify the board of	287
county commissioners, and the board of county commissioners	288
shall forthwith determine whether it would prefer to purchase or	289
lease such equipment in whole or in part for cash and if so	289

whether it will be necessary or advisable to issue bonds to 290
provide funds for the purchase of such equipment, if adopted. If 291
the board of county commissioners determines that it is 292
necessary or advisable to issue bonds therefor, it shall by 293
resolution provide for the submission on the same ballot, but as 294
a separate issue, the question of issuing such bonds. The 295
question of issuing such bonds shall be submitted as required by 296
division (A) of section 3506.03 of the Revised Code. 297

Sec. 3506.022. Beginning in the year 2019, no county shall 298
use any direct recording electronic voting machine or any 299
marking device or automatic tabulating equipment that does not 300
require the use of a voter marked and voter verified paper 301
ballot. 302

As used in this section, "voter marked and voter verified 303
paper ballot" means a paper ballot on which the voter records 304
the voter's choices, either by hand or by use of a marking 305
device that records the voter's choices on a paper ballot that 306
the voter then must inspect for accuracy. "Voter marked and 307
voter verified paper ballot" does not include a voter verified 308
paper audit trail. 309

Sec. 3506.07. ~~No~~ (A) Subject to divisions (B) and (C) of 310
this section, no automatic tabulating equipment shall be 311
approved by the board of voting machine examiners or certified 312
by the secretary of state, or be purchased, rented, or otherwise 313
acquired, or used, unless ~~it~~ both of the following apply: 314

(1) It has been or is capable of being manufactured for 315
use and distribution beyond a prototype ~~and~~. 316

(2) It can be set by election officials, to examine 317
ballots and to count votes accurately for each candidate, 318

question, and issue, excluding any ballots marked contrary to 319
the instructions printed on such ballots, ~~provided that such~~. 320

(B) Automatic tabulating equipment shall not be required 321
to count write-in votes or the votes on any ballots that have 322
been voted other than at the regular polling place on election 323
day. 324

(C) Automatic tabulating equipment that is designed to 325
count votes marked by hand on a ballot using a writing 326
instrument such as a pen or pencil shall count votes accurately 327
for each candidate, question, and issue, regardless of the type 328
of writing instrument the voter used to mark the ballot. 329

~~**Sec. 3506.19.** On and after the first federal election that 330~~
~~occurs after January 1, 2006, unless required sooner by the Help 331~~
~~America Vote Act of 2002, each Each polling location and each 332~~
~~office of a board of elections at which in-person absent voting 333~~
~~is being conducted shall have available for use at all elections 334~~
at least one ~~direct recording electronic~~ voting machine or 335
marking device that is accessible for individuals with 336
disabilities, including nonvisual accessibility for the blind 337
and visually impaired, in a manner that provides the same 338
opportunity for access and participation, including privacy and 339
independence, as for other voters. 340

Sec. 3506.21. (A) As used in this section, "optical scan 341
ballot" means a ballot that is marked by using a ~~specified~~ 342
writing instrument to fill in a designated position to record a 343
voter's candidate, question, or issue choice and that can be 344
scanned and electronically read in order to tabulate the vote. 345

(B) (1) In addition to marks that can be scanned and 346
electronically read by automatic tabulating equipment, any of 347

the following marks, if a majority of those marks are made in a 348
consistent manner throughout an optical scan ballot, shall be 349
counted as a valid vote: 350

(a) A candidate, question, or issue choice that has been 351
circled by the voter; 352

(b) An oval beside the candidate, question, or issue 353
choice that has been circled by the voter; 354

(c) An oval beside the candidate, question, or issue 355
choice that has been marked by the voter with an "x," a check 356
mark, or other recognizable mark; 357

(d) A candidate, question, or issue choice that has been 358
marked with a writing instrument that cannot be recognized by 359
automatic tabulating equipment. 360

(2) Marks made on an optical scan ballot in accordance 361
with division (B) (1) of this section shall be counted as valid 362
votes only if that optical scan ballot contains no marks that 363
can be scanned and electronically read by automatic tabulating 364
equipment. 365

(3) If automatic tabulating equipment detects that more 366
marks were made on an optical scan ballot for a particular 367
office, question, or issue than the number of selections that a 368
voter is allowed by law to make for that office, question, or 369
issue, the voter's ballot shall be invalidated for that office, 370
question, or issue. The ballot shall not be invalidated for any 371
other office, question, or issue for which the automatic 372
tabulating equipment detects a vote to have been cast, in 373
accordance with the law. 374

(C) The secretary of state may adopt rules under Chapter 375
119. of the Revised Code to authorize additional types of 376

optical scan ballots and to specify the types of marks on those 377
ballots that shall be counted as a valid vote to ensure 378
consistency in the counting of ballots throughout the state. 379

(D) (1) A board of elections of a county that uses optical 380
scan ballots and automatic tabulating equipment as the primary 381
voting system for the county shall not tabulate the unofficial 382
results of optical scan ballots voted on election day at a 383
central location. 384

(2) A board of elections that provides for the tabulation 385
at each precinct of voted ballots, and then, at a central 386
location, combines those precinct ballot totals with ballot 387
totals from other precincts, including optical scan ballots 388
voted by absent voters, shall not be considered to be tabulating 389
the unofficial results of optical scan ballots at a central 390
location for the purpose of division (D) (1) of this section. 391

Sec. 3506.22. (A) ~~Beginning in the year 2013 and~~ 392
~~thereafter, a~~ A county that selects, on or after January 1, 393
2013, selected direct recording electronic voting machines as 394
the primary voting system to be used in the county and not only 395
for accessibility for individuals with disabilities as required 396
under the Help America Vote Act of 2002 and section 3506.19 of 397
the Revised Code and that continues to use direct recording 398
electronic voting machines for that purpose shall acquire, if 399
needed, sufficient direct recording electronic voting machines 400
to meet the minimum number of direct recording electronic voting 401
machines required to be established by the secretary of state 402
under division (B) of this section. 403

(B) ~~Beginning in the year 2013 and every eight years~~ 404
~~thereafter, the~~ The secretary of state shall establish, for each 405
county described in division (A) of this section, a minimum 406

number of direct recording electronic voting machines that the 407
county shall be required to have ~~if it elects to use direct~~ 408
~~recording electronic voting machines as the primary voting~~ 409
~~system in the county~~. The minimum number for each such county 410
shall be calculated as follows: 411

(1) The total number of registered voters in the county as 412
of the October deadline for voter registration for the ~~last~~2012 413
presidential election or the average of the total number of 414
registered voters in the county as of the October deadline for 415
voter registration for the ~~last two~~2008 and 2012 presidential 416
elections, whichever number is higher, minus the total number of 417
absent voter's ballots cast and counted at the ~~last~~2012 418
presidential election, shall be determined. 419

(2) The number resulting from the determination under 420
division (B) (1) of this section shall be divided by one hundred 421
seventy-five. 422

(3) Any fraction resulting from the calculation under 423
division (B) (2) of this section shall be rounded up to the next 424
whole number. 425

(C) A county that ~~selects~~selected direct recording 426
electronic voting machines as the primary voting system to be 427
used in the county and not only for accessibility for 428
individuals with disabilities as required under the Help America 429
Vote Act of 2002 and section 3506.19 of the Revised Code after 430
May 2, 2006, but before the year 2013 and that continues to use 431
direct recording electronic voting machines for that purpose 432
shall ~~do so in accordance with~~maintain the minimum number of 433
direct recording electronic voting machines determined by the 434
formula set forth in Section 514.03 of Am. Sub. H.B. 66 of the 435
126th general assembly. 436

Section 2. That existing sections 3505.21, 3506.02, 437
3506.07, 3506.19, 3506.21, and 3506.22 of the Revised Code are 438
hereby repealed. 439

Section 3. That sections 3506.05 and 3506.10 of the 440
Revised Code be amended to read as follows: 441

Sec. 3506.05. (A) As used in this section: 442

(1) "Electronic pollbook" means an electronic list of 443
registered voters for a particular precinct or polling location 444
that may be transported to a polling location. 445

(2) Except when used as part of the phrase "tabulating 446
equipment" or "automatic tabulating equipment," "equipment" 447
means a voting machine, marking device, automatic tabulating 448
equipment, software, or an electronic pollbook. 449

(3) "Vendor" means the person that owns, manufactures, 450
distributes, or has the legal right to control the use of 451
equipment, or the person's agent. 452

(B) No voting machine, marking device, automatic 453
tabulating equipment, or software for the purpose of casting or 454
tabulating votes or for communications among systems involved in 455
the tabulation, storage, or casting of votes, and no electronic 456
pollbook, shall be purchased, leased, put in use, or continued 457
to be used, except for experimental use as provided in division 458
(B) of section 3506.04 of the Revised Code, unless it, a manual 459
of procedures governing its use, and training materials, 460
service, and other support arrangements have been certified by 461
the secretary of state and unless the board of elections of each 462
county where the equipment will be used has assured that a 463
demonstration of the use of the equipment has been made 464
available to all interested electors. The secretary of state 465

shall appoint a board of voting machine examiners to examine and 466
approve equipment and its related manuals and support 467
arrangements. The board shall consist of four members, who shall 468
be appointed as follows: 469

(1) Two members appointed by the secretary of state-; 470

(2) One member appointed by either the speaker of the 471
house of representatives or the minority leader of the house of 472
representatives, whichever is a member of the opposite political 473
party from the one to which the secretary of state belongs-; 474

(3) One member appointed by either the president of the 475
senate or the minority leader of the senate, whichever is a 476
member of the opposite political party from the one to which the 477
secretary of state belongs. 478

In all cases of a tie vote or a disagreement in the board, 479
if no decision can be arrived at, the board shall submit the 480
matter in controversy to the secretary of state, who shall 481
summarily decide the question, and the secretary of state's 482
decision shall be final. Each member of the board shall be a 483
competent and experienced election officer or a person who is 484
knowledgeable about the operation of voting equipment and shall 485
serve during the secretary of state's term. Any vacancy on the 486
board shall be filled in the same manner as the original 487
appointment. The secretary of state shall provide staffing 488
assistance to the board, at the board's request. 489

For the member's service, each member of the board shall 490
receive three hundred dollars per day for each combination of 491
marking device, tabulating equipment, voting machine, or 492
electronic pollbook examined and reported, but in no event shall 493
a member receive more than six hundred dollars to examine and 494

report on any one marking device, item of tabulating equipment, 495
voting machine, or electronic pollbook. Each member of the board 496
shall be reimbursed for expenses the member incurs during an 497
examination or during the performance of any related duties that 498
may be required by the secretary of state. Reimbursement of 499
these expenses shall be made in accordance with, and shall not 500
exceed, the rates provided for under section 126.31 of the 501
Revised Code. 502

Neither the secretary of state nor the board, nor any 503
public officer who participates in the authorization, 504
examination, testing, or purchase of equipment, shall have any 505
pecuniary interest in the equipment or any affiliation with the 506
vendor. 507

(C) (1) A vendor who desires to have the secretary of state 508
certify equipment shall first submit the equipment, all current 509
related procedural manuals, and a current description of all 510
related support arrangements to the board of voting machine 511
examiners for examination, testing, and approval. The submission 512
shall be accompanied by a fee of two thousand four hundred 513
dollars and a detailed explanation of the construction and 514
method of operation of the equipment, a full statement of its 515
advantages, and a list of the patents and copyrights used in 516
operations essential to the processes of vote recording and 517
tabulating, vote storage, system security, pollbook storage and 518
security, and other crucial operations of the equipment as may 519
be determined by the board. An additional fee, in an amount to 520
be set by rules promulgated by the board, may be imposed to pay 521
for the costs of alternative testing or testing by persons other 522
than board members, record-keeping, and other extraordinary 523
costs incurred in the examination process. Moneys not used shall 524
be returned to the person or entity submitting the equipment for 525

examination. 526

(2) Fees collected by the secretary of state under this 527
section shall be deposited into the state treasury to the credit 528
of the board of voting machine examiners fund, which is hereby 529
created. All moneys credited to this fund shall be used solely 530
for the purpose of paying for the services and expenses of each 531
member of the board or for other expenses incurred relating to 532
the examination, testing, reporting, or certification of 533
equipment, the performance of any related duties as required by 534
the secretary of state, or the reimbursement of any person 535
submitting an examination fee as provided in this chapter. 536

(D) Within sixty days after the submission of the 537
equipment and payment of the fee, or as soon thereafter as is 538
reasonably practicable, but in any event within not more than 539
ninety days after the submission and payment, the board of 540
voting machine examiners shall examine the equipment and file 541
with the secretary of state a written report on the equipment 542
with its recommendations and, if applicable, its determination 543
or condition of approval regarding whether the equipment, 544
manual, and other related materials or arrangements meet the 545
criteria set forth in sections 3506.07 and 3506.10 of the 546
Revised Code and can be safely used by the voters at elections 547
under the conditions prescribed in Title XXXV of the Revised 548
Code, or a written statement of reasons for which testing 549
requires a longer period. The board may grant temporary approval 550
for the purpose of allowing experimental use of equipment. If 551
the board finds that the equipment meets any applicable criteria 552
set forth in sections 3506.06, 3506.07, and 3506.10 of the 553
Revised Code, can be used safely and, if applicable, can be 554
depended upon to record and count accurately and continuously 555
the votes of electors, and has the capacity to be warranted, 556

maintained, and serviced, it shall approve the equipment and 557
recommend that the secretary of state certify the equipment. The 558
secretary of state shall notify all boards of elections of any 559
such certification. Equipment of the same model and make, if it 560
operates in an identical manner, may then be adopted for use at 561
elections. 562

(E) The vendor shall notify the secretary of state, who 563
shall then notify the board of voting machine examiners, of any 564
enhancement and any significant adjustment to the hardware or 565
software that could result in a patent or copyright change or 566
that significantly alters the methods of recording voter intent, 567
system security, voter privacy, retention of the vote, 568
communication of records, and connections between the system and 569
other systems. The vendor shall provide the secretary of state 570
with an updated operations manual for the equipment, and the 571
secretary of state shall forward the manual to the board. Upon 572
receiving such a notification and manual, the board may require 573
the vendor to submit the equipment to an examination and test in 574
order for the equipment to remain certified. The board or the 575
secretary of state shall periodically examine, test, and inspect 576
certified equipment to determine continued compliance with the 577
requirements of this chapter and the initial certification. Any 578
examination, test, or inspection conducted for the purpose of 579
continuing certification of any equipment in which a significant 580
problem has been uncovered or in which a record of continuing 581
problems exists shall be performed pursuant to divisions (C) and 582
(D) of this section, in the same manner as the examination, 583
test, or inspection is performed for initial approval and 584
certification. 585

(F) If, at any time after the certification of equipment, 586
the board of voting machine examiners or the secretary of state 587

is notified by a board of elections of any significant problem 588
with the equipment or determines that the equipment fails to 589
meet the requirements necessary for approval or continued 590
compliance with the requirements of this chapter, or if the 591
board of voting machine examiners determines that there are 592
significant enhancements or adjustments to the hardware or 593
software, or if notice of such enhancements or adjustments has 594
not been given as required by division (E) of this section, the 595
secretary of state shall notify the users and vendors of that 596
equipment that certification of the equipment may be withdrawn. 597

(G) (1) The notice given by the secretary of state under 598
division (F) of this section shall be in writing and shall 599
specify both of the following: 600

(a) The reasons why the certification may be withdrawn; 601

(b) The date on which certification will be withdrawn 602
unless the vendor takes satisfactory corrective measures or 603
explains why there are no problems with the equipment or why the 604
enhancements or adjustments to the equipment are not 605
significant. 606

(2) A vendor who receives a notice under division (F) of 607
this section shall, within thirty days after receiving it, 608
submit to the board of voting machine examiners in writing a 609
description of the corrective measures taken and the date on 610
which they were taken, or the explanation required under 611
division (G) (1) (b) of this section. 612

(3) Not later than fifteen days after receiving a written 613
description or explanation under division (G) (2) of this section 614
from a vendor, the board shall determine whether the corrective 615
measures taken or the explanation is satisfactory to allow 616

continued certification of the equipment, and the secretary of 617
state shall send the vendor a written notice of the board's 618
determination, specifying the reasons for it. If the board has 619
determined that the measures taken or the explanation given is 620
unsatisfactory, the notice shall include the effective date of 621
withdrawal of the certification. This date may be different from 622
the date originally specified in division (G) (1) (b) of this 623
section. 624

(4) A vendor who receives a notice under division (G) (3) 625
of this section indicating a decision to withdraw certification 626
may, within thirty days after receiving it, request in writing 627
that the board hold a hearing to reconsider its decision. Any 628
interested party shall be given the opportunity to submit 629
testimony or documentation in support of or in opposition to the 630
board's recommendation to withdraw certification. Failure of the 631
vendor to take appropriate steps as described in division (G) (1) 632
(b) or to comply with division (G) (2) of this section results in 633
a waiver of the vendor's rights under division (G) (4) of this 634
section. 635

(H) (1) The secretary of state, in consultation with the 636
board of voting machine examiners, shall establish, by rule, 637
guidelines for the approval, certification, and continued 638
certification of the voting machines, marking devices, 639
tabulating equipment, and electronic pollbooks to be used under 640
Title XXXV of the Revised Code. The guidelines shall establish 641
procedures requiring vendors or computer software developers to 642
place in escrow with an independent escrow agent approved by the 643
secretary of state a copy of all source code and related 644
documentation, together with periodic updates as they become 645
known or available. The secretary of state shall require that 646
the documentation include a system configuration and that the 647

source code include all relevant program statements in low- or 648
high-level languages. As used in this division, "source code" 649
does not include variable codes created for specific elections. 650

(2) Nothing in any rule adopted under division (H) of this 651
section shall be construed to limit the ability of the secretary 652
of state to follow or adopt, or to preclude the secretary of 653
state from following or adopting, any guidelines proposed by the 654
federal election commission, any entity authorized by the 655
federal election commission to propose guidelines, the election 656
assistance commission, or any entity authorized by the election 657
assistance commission to propose guidelines. 658

~~(3) (a) Before the initial certification of any direct- 659
recording electronic voting machine with a voter verified paper- 660
audit trail, and as a condition for the continued certification- 661
and use of those machines, the secretary of state shall 662
establish, by rule, standards for the certification of those 663
machines. Those standards shall include, but are not limited to, 664
all of the following: 665~~

~~(i) A definition of a voter verified paper audit trail as- 666
a paper record of the voter's choices that is verified by the 667
voter prior to the casting of the voter's ballot and that is 668
securely retained by the board of elections; 669~~

~~(ii) Requirements that the voter verified paper audit- 670
trail shall not be retained by any voter and shall not contain 671
individual voter information; 672~~

~~(iii) A prohibition against the production by any direct- 673
recording electronic voting machine of anything that legally 674
could be removed by the voter from the polling place, such as a 675
receipt or voter confirmation; 676~~

~~(iv) A requirement that paper used in producing a voter-verified paper audit trail be sturdy, clean, and resistant to degradation;~~ 677
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~~(v) A requirement that the voter verified paper audit trail shall be capable of being optically scanned for the purpose of conducting a recount or other audit of the voting machine and shall be readable in a manner that makes the voter's ballot choices obvious to the voter without the use of computer or electronic codes;~~ 680
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~~(vi) A requirement, for office-type ballots, that the voter verified paper audit trail include the name of each candidate selected by the voter;~~ 686
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~~(vii) A requirement, for questions and issues ballots, that the voter verified paper audit trail include the title of the question or issue, the name of the entity that placed the question or issue on the ballot, and the voter's ballot selection on that question or issue, but not the entire text of the question or issue.~~ 689
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~~(b) The secretary of state, by rule adopted under Chapter 119. of the Revised Code, may waive the requirement under division (H) (3) (a) (v) of this section, if the secretary of state determines that the requirement is cost prohibitive.~~ 695
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~~(4) (a) Except as otherwise provided in divisions (H) ~~(4)~~ (3) (b) and (c) of this section, any voting machine, marking device, or automatic tabulating equipment used in this state shall meet, as a condition of continued certification and use, the voting system standards adopted by the federal election commission in 2002 or the voluntary voting system guidelines most recently adopted by the federal election assistance commission. A voting~~ 699
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machine, marking device, or automatic tabulating equipment 706
initially certified or acquired on or after December 1, 2008, 707
also shall have the most recent federal certification number 708
issued by the election assistance commission. 709

(b) Division (H) ~~(4)~~ (3) (a) of this section does not apply 710
to any voting machine, marking device, or automatic tabulating 711
equipment that the federal election assistance commission does 712
not certify as part of its testing and certification program. 713

(c) A county that acquires additional voting machines, 714
marking devices, or automatic tabulating equipment on or after 715
December 1, 2008, shall not be considered to have acquired those 716
machines, devices, or equipment on or after December 1, 2008, 717
for the purpose of division (H) ~~(4)~~ (3) (a) of this section if all 718
of the following apply: 719

(i) The voting machines, marking devices, or automatic 720
tabulating equipment acquired are the same as the machines, 721
devices, or equipment currently used in that county. 722

(ii) The acquisition of the voting machines, marking 723
devices, or automatic tabulating equipment does not replace or 724
change the primary voting system used in that county. 725

(iii) The acquisition of the voting machines, marking 726
devices, or automatic tabulating equipment is for the purpose of 727
replacing inoperable machines, devices, or equipment or for the 728
purpose of providing additional machines, devices, or equipment 729
required to meet the allocation requirements established 730
pursuant to division (I) of section 3501.11 of the Revised Code. 731

Sec. 3506.10. No voting machine shall be approved by the 732
board of voting machine examiners or certified by the secretary 733
of state, or be purchased, rented, or otherwise acquired, or 734

used, except when specifically allowed for experimental use, as 735
provided in section 3506.04 of the Revised Code, unless it 736
fulfills the following requirements: 737

(A) It shall permit and require voting in absolute 738
secrecy, and shall be so constructed that no person can see or 739
know for whom any other elector has voted or is voting, except 740
an elector who is assisting a voter as prescribed by section 741
3505.24 of the Revised Code. 742

(B) It shall permit each elector to vote at any election 743
for all persons and offices for whom and for which the elector 744
is lawfully entitled to vote, whether or not the name of any 745
such person appears on a ballot label as a candidate; to vote 746
for as many persons for an office as the elector is entitled to 747
vote for; and to vote for or against any question upon which the 748
elector is entitled to vote. 749

(C) It shall preclude each elector from voting for any 750
candidate or upon any question for whom or upon which the 751
elector is not entitled to vote, from voting for more persons 752
for any office than the elector is entitled to vote for, and 753
from voting for any candidates for the same office or upon any 754
question more than once. 755

(D) It shall permit each voter to deposit, write in, or 756
affix, upon devices provided for that purpose, ballots 757
containing the names of persons for whom the voter desires to 758
vote, whose names do not appear upon the voting machine. Those 759
devices shall be susceptible of identification as to party 760
affiliations when used at a primary election. 761

(E) It shall permit each elector to change the elector's 762
vote for any candidate or upon any question appearing upon the 763

ballot labels, up to the time the elector starts to register the 764
elector's vote. 765

(F) It shall permit each elector, at all presidential 766
elections, by one device to vote for candidates of one party for 767
president, vice-president, and presidential electors. 768

(G) It shall be capable of adjustment by election officers 769
so as to permit each elector, at a primary election, to vote 770
only for the candidates of the party with which the elector has 771
declared the elector's affiliation and shall preclude the 772
elector from voting for any candidate seeking nomination by any 773
other political party; and to vote for the candidates for 774
nonpartisan nomination or election. 775

(H) It shall have separate voting devices for candidates 776
and questions, which shall be arranged in separate rows or 777
columns. It shall be so arranged that one or more adjacent rows 778
or columns may be assigned to the candidates of each political 779
party at primary elections. 780

(I) It shall have a counter, or other device, the register 781
of which is visible from the outside of the machine, and which 782
will show at any time during the voting the total number of 783
electors who have voted; and also a protective counter, or other 784
device, the register of which cannot be reset, which will record 785
the cumulative total number of movements of the internal 786
counters. 787

(J) It shall be provided with locks and seals by the use 788
of which, immediately after the polls are closed or the 789
operation of the machine for an election is completed, no 790
further changes to the internal counters can be allowed. 791

(K) It shall have the capacity to contain the names of 792

candidates constituting the tickets of at least five political 793
parties, and independent groups and such number of questions not 794
exceeding fifteen as the secretary of state shall specify. 795

(L) It shall be durably constructed of material of good 796
quality in a neat and workerlike manner, and in form that shall 797
make it safely transportable. 798

(M) It shall be so constructed that a voter may readily 799
learn the method of operating it, may expeditiously cast a vote 800
for all candidates of the voter's choice, and when operated 801
properly shall register and record correctly and accurately 802
every vote cast. 803

(N) It shall be provided with a screen, hood, or curtain, 804
which will conceal the voter while voting. During the voting, it 805
shall preclude every person from seeing or knowing the number of 806
votes registered for any candidate or question and from 807
tampering with any of the internal counters. 808

(O) It shall not provide to a voter any type of receipt or 809
voter confirmation that the voter legally may retain after 810
leaving the polling place. 811

~~(P) On and after the first federal election that occurs 812
after January 1, 2006, unless required sooner by the Help- 813
America Vote Act of 2002, if the voting machine is a direct- 814
recording electronic voting machine, it shall include a voter- 815
verified paper audit trail. 816~~

Before any voting machine is purchased, rented, or 817
otherwise acquired, or used, the person or corporation owning or 818
manufacturing that machine or having the legal right to control 819
the use of that machine shall give an adequate guarantee in 820
writing and post a bond in an amount sufficient to cover the 821

cost of any recount or new election resulting from or directly 822
related to the use or malfunction of the equipment, accompanied 823
by satisfactory surety, all as determined by the secretary of 824
state, with the board of county commissioners, guaranteeing and 825
securing that those machines have been and continue to be 826
certified by the secretary of state in accordance with section 827
3506.05 of the Revised Code, comply fully with the requirements 828
of this section, and will correctly, accurately, and 829
continuously register and record every vote cast, and further 830
guaranteeing those machines against defects in workmanship and 831
materials for a period of five years from the date of their 832
acquisition. 833

Section 4. That existing sections 3506.05 and 3506.10 of 834
the Revised Code are hereby repealed. 835

Section 5. That section 3506.22 of the Revised Code, as 836
amended by Section 1 of this act, is hereby repealed. 837

Section 6. Sections 3, 4, and 5 of this act take effect 838
January 1, 2019. 839