

ed, a certificate of the total number of electors voting "Yes" and of the total number of electors voting "No" on such question shall be filed in the office of the county election board, and copies thereof, certified by the county election board, shall forthwith be furnished to the Secretary of the Commonwealth, and to the county commissioners or other appropriating authority of the county or municipality.

(c) If a majority of the electors of any county or municipality, voting on such question, shall vote against the adoption of an electronic voting system the question shall not again be submitted to the voters of such county or municipality within a period of one hundred three weeks.

(f) Whenever, under the provisions of this act, the question of the adoption of an electronic voting system is to be submitted to the electors of any county, the county board of elections shall purchase, lease or otherwise procure those parts of the system used by the voter in a quantity sufficient for reasonable demonstration of the system or systems in such county prior to the general or municipal election in question.

1937, June 3, P.L. 1333, art. XI-A, § 1103-A, added 1980, July 11, P.L. 600, No. 128, § 4, imd. effective.

§ 3031.4. Installation of electronic voting systems

(a) If a majority of the qualified registered electors voting on the question in any county or municipality vote in favor of the adoption of an electronic voting system, the county board of elections of that county shall purchase, lease, or otherwise procure for each election district of such county or municipality, the components of an electronic voting system of a kind approved, as hereinafter provided, by the Secretary of the Commonwealth, and the board shall thereafter notify the Secretary of the Commonwealth, in writing, that they have done so.

(b) The installation throughout the county or municipality of the electronic voting system adopted by the county board of elections may be accomplished either simultaneously in all election districts or in stages at the discretion of the county board, and the manner of implementation as among election districts shall also be at the discretion of the county board: Provided, however, That the electronic voting system adopted by the county board shall be fully implemented throughout the county or municipality within one hundred and three weeks after the approval of the adoption of an electronic voting system by the electors of the county or municipality. Upon the installation of an electronic voting system in any election district, the use therein of paper ballots and of voting machines shall be discontinued, except as otherwise provided herein.

(c) If the question hereinbefore provided shall have been submitted to the qualified registered electors of the county or municipality and the majority of the electors voting thereon shall have voted favorably thereon, and if the county board of elections shall not, within one year after such vote, have executed a contract or contracts providing for the purchase, lease or other procurement of an electronic voting system for use at the general, municipal, primary or special election occurring at least one year and sixty days after such vote, then the Secretary of the Commonwealth shall forthwith in writing, notify the said county board of elections that, after the expiration of thirty days, he, under the authority of this act, will award, make and execute such contract or contracts on behalf of the said county, unless the said county board of elections shall make and execute the same prior to the expiration of that period and shall notify him, in writing, that they have done so.

(d) If, upon the expiration of said thirty days, the county board of elections still shall not have made and executed a contract or contracts providing for the purchase, lease or other procurement of an electronic voting system as aforesaid, the Secretary of the Commonwealth, on behalf of the said county and upon the approval of the Attorney General as to form, shall thereupon award, make and execute a contract or contracts for the purchase, lease or other procurement of an Electronic Voting System, approved as required by this act, for each election district within such county or municipality, and the cost of such system, including the preparation and printing of specifications and all other necessary expenses incidental thereto, shall be the debt of the said county, and upon the certificate of the Secretary of the Commonwealth, it shall be the duty of the controller, if any, to allow, and of the treasurer of the county to pay, the sum out of any appropriation available therefore or out of the first unappropriated moneys that come into the treasury of the county. If the Secretary of the Commonwealth shall find it impracticable to procure an electronic voting system for installation in each election district of the county or municipality for use at the election then next ensuing, he shall provide for the installation of such a system in as many election districts of the county or municipality as shall be practicable and, as soon thereafter as practicable, shall provide for the installation of such system in the remainder of the election districts of the county or municipality.

(e) Any county or municipality may, by a majority vote of its qualified registered electors cast at any general or municipal election held not earlier than one hundred and three weeks after they have voted to adopt an electronic voting system, direct the discontinuance of the use of such a system at all elections held in such county or municipality. Upon the receipt by the county board of elections of a

petition signed by qualified registered electors of the county or municipality equal in number to at least ten (10) per centum of the total number of electors who voted in said county or municipality at the last preceding general or municipal election, the question for the discontinuance of the use of such an electronic voting system shall be submitted to the qualified registered electors of that county or municipality, subject to the same requirements as to the conduct of the election as is required for the submission of the question on the authorization of the use of an electronic voting system. The question as to the discontinuance of the use of an electronic voting system shall be submitted in the following form: "Shall the use of an electronic voting system be continued in the (county or municipality) of?"

1937, June 3, P.L. 1333, art. XI-A, § 1104-A, added 1980, July 11, P.L. 600, No. 128, § 4, imd. effective.

§ 3031.5. Examination and approval of electronic voting systems by the Secretary of the Commonwealth

(a) Any person or corporation owning, manufacturing or selling, or being interested in the manufacture or sale of, any electronic voting system, may request the Secretary of the Commonwealth to examine such system. Any ten or more persons, being qualified registered electors of this commonwealth, may, at any time, request the Secretary of the Commonwealth to reexamine any electronic voting system theretofore examined and approved by him. Before any such examination or reexamination, the person, persons, or corporation, requesting such examination or reexamination, shall pay to the Treasurer of the Commonwealth an examination fee of four hundred fifty dollars (\$450). The Secretary of the Commonwealth may, at any time, in his discretion, reexamine any such system therefore examined and approved by him. The Secretary of the Commonwealth may issue directives or instructions for implementation of electronic voting procedures and for the operation of electronic voting systems.

(b) Upon receipt of a request for examination or reexamination of an electronic voting system as herein provided for or in the event he determines to reexamine any such system, the Secretary of the Commonwealth shall require such electronic voting system to be examined or reexamined by three examiners whom he shall appoint for that purpose, of whom one shall be an expert in patent law and the other two shall be experts in electronic computer systems, automatic tabulating equipment or such other fields as in the judgment of the Secretary of the Commonwealth shall be reasonably related to the operation of the electronic voting system under examination, and he shall require of them a written report on such system, attested by their signatures; and the Secretary of the Commonwealth himself

shall examine the electronic voting system and shall make and file in his office, together with the reports of the examiners appointed by him, his own report, attested by his signature and the seal of his office, stating whether, in his opinion and in consideration of the reports of the examiners aforesaid, the system so examined can be safely used by voters at elections as provided in this act and meets all of the requirements hereinafter set forth. If his report states that the system can be so used and meets all such requirements, such system shall be deemed approved and may be adopted for use at elections, as herein provided. With respect to any electronic voting system approved for use in this Commonwealth by the secretary, the report of the secretary shall specify the capacity of the components of that system, the number of voters who may reasonably be accommodated by the voting devices and automatic tabulating equipment which comprise such system and the number of additional clerks, if any, that may be required based on the number of registered electors in any election district in which the voting system is to be used, such specifications being based upon the reports of the examiners and the secretary's own examination of the system. Any county which thereafter may adopt any such approved system shall provide the components of such system in a number no less than that sufficient to accommodate the voters of that county or municipality in accordance with the minimum capacity standards so prescribed by the secretary.

(c) No electronic voting system not so approved shall be used at any election, and if, upon the reexamination of any such system previously approved, it shall appear that the system so reexamined can no longer be used safely by voters at elections as provided in this act or does not meet the requirements hereinafter set forth, the approval of that system shall forthwith be revoked by the Secretary of the Commonwealth, and that system shall not thereafter be used or purchased for use in this Commonwealth.

(d) When an electronic voting system has been so approved, no improvement or change that does not impair its accuracy, efficiency or capacity or its compliance with the requirements hereinafter set forth, shall render necessary the reexamination or reapproval of such system.

(e) Neither the Secretary of the Commonwealth, nor any examiner appointed by him for the purposes prescribed by this section, nor any member of a county board of elections shall have any pecuniary interest in any electronic voting system or in any of the components thereof, or in the design, manufacture or sale thereof.

(f) Each examiner appointed hereunder shall receive a compensation of one hundred and fifty dollars (\$150) for each type of electronic voting system examined by him.

1937, June 3, P.L. 1333, art. XI-A, § 1105-A, added 1980, July 11, P.L. 600, No. 128, § 4, imd. effective.

when so computed, a certificate of the total number of electors voting "Yes" and of the total number of electors voting "No" on such question shall be filed in the office of the county election board, and copies thereof, certified by the county election board, shall forthwith be furnished to the Secretary of the Commonwealth, and to the county commissioners or other appropriating authority of the county or municipality.

(e) If a majority of the electors of any county or municipality, voting on such question, shall vote against the adoption of an electronic voting system the question may again be submitted to the voters of such county or municipality.

(f) Whenever, under the provisions of this act, the question of the adoption of an electronic voting system is to be submitted to the electors of any county, the county board of elections shall purchase, lease or otherwise procure those parts of the system used by the voter in a quantity sufficient for reasonable demonstration of the system or systems in such county prior to the general or municipal election in question.

1007, June 3, P.L. 1333, art. XI-A, § 1105-A, added 1989, July 11, P.L. 600, No. 128, § 4, *ind. effective*. Amended 2002, Dec. 9, P.L. 1246, No. 150, § 9, *ind. effective*.

Historical and Statutory Notes

Act 2002-150 legislation

Act 2002-150, § 9, in subsec. (c), substituted "may again be submitted to the voters of such county or municipality" for "shall not again be

submitted to the voters of such county or municipality within a period of one hundred three weeks."

§ 3031.4. Installation of electronic voting systems

Notes of Decisions

Contract claim 1

1. Contract claim

Under Pennsylvania law, county could invoke doctrine of *ad idem tempus* occurrit regi to avoid statute of limitations defense to its claim based upon performance bond issued by surety in con-

nection with county's purchase of electronic voting machines; since county was required by law to purchase electronic machines, claim arising out of contract to purchase the machines accrued to county in its governmental capacity and would be brought to enforce an obligation imposed by law. *Montgomery County v. MicroVote Corp.*, E.D.Pa.1998, 23 F.Supp.2d 553. Counties 09-216

§ 3031.5. Examination and approval of electronic voting systems by the Secretary of the Commonwealth

(a) Any person or corporation owning, manufacturing or selling, or being interested in the manufacture or sale of, any electronic voting system, may request the Secretary of the Commonwealth to examine such system if the voting system has been examined and approved by a federally recognized independent testing authority and if it meets any voting system performance and test standards established by the Federal Government. The costs of the examination shall be paid by the person requesting the examination in an amount set by the Secretary of the Commonwealth. Any ten or more persons, being qualified registered electors of this Commonwealth, may, at any time, request the Secretary of the Commonwealth to reexamine any electronic voting system theretofore examined and approved by him. Before any reexamination, the person, persons, or corporation, requesting such reexamination, shall pay to the Treasurer of the Commonwealth a reexamination fee of four hundred fifty dollars (\$450). The Secretary of the Commonwealth may, at any time, in his discretion, reexamine any such system theretofore examined and approved by him. The Secretary of the Commonwealth may issue directives or instructions for implementation of electronic voting procedures and for the operation of electronic voting systems.

(b) Upon receipt of a request for examination or reexamination of an electronic voting system as herein provided for or in the event he determines to reexamine any such system, the Secretary of the Commonwealth shall examine the electronic voting system and shall make and file in his office his report, attested by his signature and the seal of his office, stating whether, in his opinion, the system so examined can be safely used by

voters at elections as provided in this act and meets all of the requirements hereinafter set forth. If his report states that the system can be so used and meets all such requirements, such system shall be deemed approved and may be adopted for use at elections, as herein provided. With respect to any electronic voting system approved for use in this Commonwealth by the secretary, the report of the secretary shall specify the capacity of the components of that system, the number of voters who may reasonably be accommodated by the voting devices and automatic tabulating equipment which comprise such system and the number of clerks and machine inspectors, if any, required based on the number of registered electors in any election district in which the voting system is to be used, such specifications being based upon the secretary's examination of the system. Any county which thereafter may adopt any such approved system shall provide the components of such system in a number no less than that sufficient to accommodate the voters of that county or municipality in accordance with the minimum capacity standards so prescribed by the secretary. The county board shall comply with the requirements for the use of the electronic voting system as set forth in the report by the Secretary of the Commonwealth.

(c) No electronic voting system not so approved shall be used at any election, and if, upon the reexamination of any such system previously approved, it shall appear that the system so reexamined can no longer be used safely by voters at elections as provided in this act or does not meet the requirements hereinafter set forth, the approval of that system shall forthwith be revoked by the Secretary of the Commonwealth, and that system shall not thereafter be used or purchased for use in this Commonwealth.

(d) When an electronic voting system has been so approved, no improvement or change that does not impair its accuracy, efficiency or capacity or its compliance with the requirements hereinafter set forth, shall render necessary the reexamination or reapproval of such system.

(e) Neither the Secretary of the Commonwealth nor any member of a county board of elections shall have any pecuniary interest in any electronic voting system or in any of the components thereof, or in the design, manufacture or sale thereof.

1007, June 3, P.L. 1333, art. XI-A, § 1105-A, added 1989, July 11, P.L. 600, No. 128, § 4, *ind. effective*. Amended 2002, Dec. 9, P.L. 1246, No. 150, § 9, *ind. effective*.

Historical and Statutory Notes

Act 2002-150 legislation

Act 2002-150, § 9, rewrite subsecs. (a) and (b), which prior thereto read:

"(a) Any person or corporation owning, manufacturing or selling, or being interested in the manufacture or sale of, any electronic voting system, may request the Secretary of the Commonwealth to examine such system. Any ten or more persons, being qualified registered electors of this Commonwealth, may, at any time, request the Secretary of the Commonwealth to reexamine any electronic voting system theretofore examined and approved by him. Before any such examination or reexamination, the person, persons, or corporation, requesting such examination or reexamination, shall pay to the Treasurer of the Commonwealth an examination fee of four hundred fifty dollars (\$450). The Secretary of the Commonwealth may, at any time, in his discretion, reexamine any such system theretofore examined and approved by him. The Secretary of the Commonwealth may issue directives or instructions for implementation of electronic voting procedures and for the operation of electronic voting systems.

"(b) Upon receipt of a request for examination or reexamination of an electronic voting system as herein provided for or in the event he

determines to reexamine any such system, the Secretary of the Commonwealth shall reexamine such electronic voting system to be examined or reexamined by three examiners whom he shall appoint for that purpose, of whom one shall be an expert in patent law and the other two shall be experts in electronic computer systems, automatic tabulating equipment or such other fields as in the judgment of the Secretary of the Commonwealth shall be reasonably related to the operation of the electronic voting system under examination, and he shall require of them a written report on such system, attested by their signatures, and the Secretary of the Commonwealth himself shall examine the electronic voting system and shall make and file in his office, together with the reports of the examiners appointed by him, his own report, attested by his signature and the seal of his office, stating whether, in his opinion and in consideration of the reports of the examiners aforesaid, the system so examined can be safely used by voters at elections as provided in this act and meets all of the requirements hereinafter set forth. If his report states that the system can be so used and meets all such requirements, such system shall be deemed approved and may be adopted for use at elections, as herein provided. With respect to any electronic voting system approved for use in

this Commonwealth by the secretary, the report of the secretary shall specify the capacity of the components of that system, the number of voters who may reasonably be accommodated by the voting devices and automatic tabulating equipment which comprise such system and the number of additional clerks, if any, that may be required based on the number of registered electors in any election district in which the voting system is to be used, such specifications being based upon the reports of the examiners and the secretary's own examination of the system. Any county which thereafter may adopt any such approved system shall provide the com-

ponents of such system in a number no less than that sufficient to accommodate the voters of that county or municipality in accordance with the minimum capacity standards so prescribed by the secretary."

; in subsec. (e), deleted "; nor any examiner appointed by him for the purposes prescribed by this section," following "Secretary of the Commonwealth"; and deleted subsec. (f), which read:

"(f) Each examiner appointed hereunder shall receive a compensation of one hundred and fifty dollars (\$150) for each type of electronic voting system examined by him."

§ 3031.6. Experimental use of electronic voting systems

(a) The county board of elections of any county may provide for experimental use at any primary or election in one or more election districts of said county, of an electronic voting system, and the use of such system shall be as valid for all purposes as if the electronic voting system had been adopted in accordance with the provisions of this act.

(b) The Secretary of the Commonwealth may approve the use of an experimental electronic voting system by the county board of elections of any county which complies with section 1306(a) ¹ for absentee voters as provided for in the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924) if the system allows the elector to mark his electronic ballot in secrecy as provided for paper absentee ballots pursuant to section 1306(a). The system shall be exempt from the requirements of sections 1107-A, 1302, 1303, 1304, 1305 and 1306. ²

1937, June 3, P.L. 1333, art. XI-A, § 1106-A, added 1980, July 11, P.L. 600, No. 128, § 4, *ind. effective*; 2002, Dec. 9, P.L. 1246, No. 150, § 9, *ind. effective*.

¹ 25 P.S. § 3146.6.

² 25 P.S. §§ 3031.7, 3146.2, 3146.3, 3146.4, 3146.5, 3146.6.

Historical and Statutory Notes

Act 2002-150 legislation

Act 2002-150, § 9, designated the prior text of this section as subsec. (a) and added subsec. (b).

§ 3031.7. Requirements of electronic voting systems

Cross References

Experimental use of electronic voting, exemption from the requirements of this section, see 25 P.S. § 3031.6.

§ 3031.12. Election day procedures and the process of voting

United States Supreme Court

Freedom of political association, semiclosed primary election system, requirement that only registered party members and invited independents vote in party primary, see

Clingman v. Beaver, 2005, 125 S.Ct. 2029, 181 L.Ed.2d 920, on remand 139 Fed.Apps. 936, 2005 WL 1638756.