

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Fifteenth Congress
First Regular Session

House Bill No. 3140

Introduced by HON. MARC DOUGLAS IV C. CAGAS

EXPLANATORY NOTE

Since the inception of the Republican System, earmarked as an integral component of Democracy, the then newly introduced system of choosing the set of people who will govern the entire body polity has already been pre-organized, its precepts carefully pre-assembled, fraudulently mechanized, so as to be capable of being manipulated by the decadent powerful one way or another.

Later to be widely and most commonly referred to as the "Elections", this democratic exercise has been abused by crooks to amass power, fame and wealth by all means necessary, including the employment of force and threats, only to be proclaimed the victor in the battle.

More often than not, the term election is interchangeably portrayed as, and or more commonly associated with violence, fraud and corruption. Everywhere Elections is in action, fraudulent machinations to manipulate the results always ensue. Accordingly, not a single democratic jurisdiction anywhere in the world can say that their electoral exercises have not been visited by any form of fraud and violence.

In the Philippine settings, the exercise of the Constitutional Right to Suffrage has never been easy and peaceful too. Rampant open-ballot-vote-buying, ballot switching and snatching, countless acts of election-related terrorism, political killings, are just some of the noted events that transpire every time elections are being held. As a matter of fact, these scenarios are the most favorite issues commonly seen in all election protests filed by adverse political rivals due to its rampant occurrence.

Some say that as long as the procedure, mechanics, operation and the parameters of holding the elections involve human discretion, election related fraud and massive cheating will always be present. If there is present, human volition, that maybe subjected to control, then no amount of remedy however

expensive it will be that will work to combat all these election related maladies.

Ergo, following the successful shift of procedure from manual to electronic system done in many countries today, our government has tried to modify our long, fraud -prone and cumbersome manual system of elections, hoping that the aforesaid dilemma would be stopped. Apart from the expensive costs of the machines that require to be in such number as to negate the disenfranchisement of people in the far flung suburbs and barrios; the relatively inexperienced agencies that will coordinately work for the launching of the first ever automated elections in the country; the dearth in information technology- man power who will be responsible for the trouble-shooting of the machines in case they back down during the elections; the adoption of the new election system was certainly forthcoming. The government was so adamant to bid farewell to all those election controversies in the manual system, even if it will mean spending billions of hard earned tax payers' money.

Come May 10, 2010 synchronized National and Local Elections, the people of the Philippines took part in the historic launching and holding of the first ever automated elections in the country.

However, what was perceived to be the ultimate solution to forestall poll cheating customarily practiced in our country, proved to be not entirely correct. The automated election system was not spared by electoral fraud as well. Albeit the cause for fraud is not something attributable to human discretion like that in the manual system, the same solicited countless disappointments from the voting public. Everything, starting from electronic registration of voters, to an unorganized voters' list, isolated cases of failure of scanning, printing and consolidating of electronic returns, to unexplained possession of Smartmatic Flash Cards in the hands of candidates were just some of the noted problems. Interestingly though, noted by numerous critics, the predicaments encountered in the operation of the automated system in the recent national and local elections, were not as severe as those encountered in the past.

Commensurate with the plight of the discontented few, is the overwhelming satisfaction of the contented many. Counting of votes and the proclamation of winners came quick unlike in the past, when counting and canvassing could reach up to a month after the election day. Terrorism and ballot switching were minimized because electronic results will be transmitted through networking apart from the required personal delivery of the authorized custodian to canvassing centers as mandated by law.

Everything in the operation of the automated system seemed fine save of course to some technical issues that under the circumstances, may be absolved as excusable mistakes. This is the first time that automated elections were held in the country, and, albeit said excusable mistakes should be rectified, the same was somewhat expected as a calculated risk. What can we do, apart from the long and arduous preparations that the government has gone through; mistakes are always bound to happen.

The legal as well as political experts linked the law authorizing the automated election system itself as the one that caused all the imperfections. It is submitted that with the comprehensive input that the law requires, coupled with the fast approaching election time, Congress has overlooked the inclusion of material components in the law.

Time and again, Congress should be called to rectify an apparent mistake. In order not to fail the constitutionally guaranteed rights of the citizens to vote for their chosen candidates during elections, it is high time that the law authorizing the automated election system be amended.

In view of the foregoing, passage of the amendatory law is highly sought.


MARC DOUGLAS C. CAGAS

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Fifteenth Congress
First Regular Session

House Bill No. 3140

Introduced by HON. MARC DOUGLAS IV C. CAGAS

**AN ACT AMENDING THE AMENDATORY REPUBLIC ACT 9369,
OTHERWISE KNOWN AS THE AUTOMATED ELECTION LAW,
AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 7166 AND
OTHER RELATED ELECTION LAWS, PROVIDING FUNDS
THEREFOR AND FOR OTHER PURPOSES.**

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

Section 1. Title. - This ACT shall be known as the Amendatory
Automated Elections Act of 2010.

Section 2. Section 7 of Republic Act 9369 amending Section 6 of
Republic Act 8436 is hereby further amended and/or
supplemented to read as follows:

“Sec 6 Minimum System Capabilities. “The
automated election system must at least have the
following functional capabilities:

-X X X-

(f) System auditability which provides
supporting documentation for verifying the
correctness of reported election results,
***especially the required official and
designated signatures and indication
of transmission and printing time of
election returns;***

Section 3. Section 8 thereof amending for that matter Section 7 of is Republic Act 8436 is hereby further amended to read as follows:

"Sec. 7. Communication Channels for Electronic Transmissions. - All electronic transmissions by and among the AES and its related components shall utilize pre-designated secure communication channels as recommended and officially designated by the Advisory Council, to ensure authentication and integrity of transmissions."

Section 4. The third(3rd) to the last paragraph of Section 9 amending Section 8 of Republic Act 8436 is hereby further amended to read as follows:

"Sec. 8. The Advisory Council. - The Commission shall create an Advisory Council, hereafter referred to as the Council, which shall be convened not later than eighteen (18) months prior to the next scheduled electoral exercise, and deactivated six months after completion of canvassing: Provided, for purposes of the 2007 elections, the Advisory Council shall be immediately convened within ten (10) days after the effectivity of this Act."

xxx

xxx

xxx

"Any violation of the two immediately preceding paragraphs shall disqualify said member from the Advisory Council and shall be punishable as provided in this Act and shall be penalized in accordance with the Anti-Graft and Corrupt Practices Act and other related laws. Said disqualified member shall not be eligible for re-appointment in such capacity in the future."

xxx

Section 5. Section 10 thereof amending for that matter Section 8 of Republic Act 8436 is hereby further amended to read as follows:

"Sec. 12. Procurement of Equipment and Materials.
 - To achieve the purpose of this Act, the Commission is authorized to procure, in accordance with existing laws, by purchase, lease, rent or other forms of acquisition, supplies, equipment, materials, software, facilities and other services, from local or foreign sources free from taxes and import duties, subject to accounting and auditing rules and regulations. With respect to the May 10, 2010 elections and succeeding electoral exercises, the system procured, **or any systems enhancements consistent with process improvement specifically to ballot appreciation, transmission and tracking,** must have demonstrated capability **following simulation exercises using actual paper with the quality, size and weight of the ballots to be used on election day,** and been successfully used in a prior electoral exercise here or abroad. Participation in the 2007 pilot exercise shall not be conclusive of the system's fitness.

Failure of the system to generate expected results is a ground to nullify the purchase, subject to indemnity in favor of the government, and would authorize the Commission on Elections to adopt an alternative measure in the exigency of conducting a free, honest and credible elections.

Section 6. The last paragraph of Section 20 thereof amending for that matter Section 21 of Republic Act 8436 is hereby further amended to read as follows:

"Sec. 25. Canvassing by Provincial, City, District and Municipal Boards of Canvassers.

"The city or municipal board of canvassers shall canvass the votes for the president, vice-president, senators, and parties, organizations or coalitions participating

under the party-list system by consolidating the electronically transmitted results or the results contained in the data storage devices used in the printing of the- election returns. Upon completion of the canvass, it shall print the certificate of canvass of votes for president, vice-president, senators and members of the House of Representatives and elective provincial officials and thereafter, proclaim the elected city or municipal officials, as the case may be.

xxx

xxx

"The certificates of canvass transmitted electronically and digitally signed, **reflecting the corresponding transmission and printing time**, shall be considered as official election results and shall be used as the basis for the proclamation of a winning candidate."

Section 7. Section 24 thereof creating new Section 29 of Republic Act 8436 is hereby further amended to read as follows:

"Sec. 29. Random Manual Audit. – Where the AES is used, there shall be a random manual audit in one precinct per congressional district randomly chosen by the Commission in each province and city. Any difference between the automated and manual count will result in the determination of root cause and initiate a manual count for those precincts affected by the computer or procedural error, **subject to the applicable statistical and operational standards set for the purpose by the COMELEC, after due recommendation from the Advisory Council.**"

Section 8. Section 28 thereof amending for that matter Section 29 of Republic Act 8436 is hereby further amended and supplemented to read as follows:

"Sec. 35. Prohibited Acts and Penalties. The following shall be penalized as provided in this Act, whether or not said acts affect the electoral process or results:

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

Xxx

Xxx

(3) The supporting documentation for verifying the correctness of reported election results, especially the required official and designated signatures and indication of transmission and printing time of election returns.

xxx

The last paragraph thereof is hereby further amended to read as follows:

"Any person convicted for violation of this Act, except those convicted of the crime of electoral sabotage, shall be penalized with imprisonment of twelve (12) years and one day to fifteen (15) years without possibility of parole, and perpetual disqualification to hold public office and deprivation of the right of suffrage. Moreover, the offender shall be perpetually disqualified to hold any non-elective public office."

Section 9.

Section 42 thereof amending Section 27 (b) of Republic Act No. 6646 is hereby amended to read as follows:

"Sec. 27. Election Offenses; Electoral Sabotage. - In addition to the prohibited acts and election offenses enumerated in Sections 261 and 262 of Batas Pambansa Blg. 881, as amended, the following shall be guilty of an election offense or a special election offense to be known as electoral sabotage, subject to the penalty provided herein:

"(a) x x x

(b) Any person or member of the board of election inspectors or board of canvassers who tampers, increases or decreases the votes received by a candidate in any election or any member of the board who refuses, after proper verification and hearing, to credit the correct votes or deduct such tampered votes: Provided, however, That when the tampering, increase or decrease of votes or the

refusal to credit the correct votes and/or to deduct tampered votes are perpetrated on a large scale or in substantial numbers, the same shall be considered, not as an ordinary election offense under Sections 261 and/or 262 of the omnibus election code, but a special election offense to be known as electoral sabotage and the penalty to be imposed shall be life imprisonment.

"The act or offense committed shall fall under the category of electoral sabotage in any of the following instances;

"(1) When the tampering, increase and/or decrease of votes perpetrated or the refusal to credit the correct votes or to deduct tampered votes, is/are committed in the election of a national elective office which is voted upon nationwide;

"(2) Regardless of the elective office involved, when the tampering, increase and/or decrease of votes committed or the refusal to credit the correct votes or to deduct tampered votes perpetrated, is accomplished in a single election document or in the transposition of the figures/results from one election document to another;

Provided finally, That any and all either persons or individuals determined to be in conspiracy or in connivance with the members of the BEIs or BOCs involved, shall be meted the same penalty of life imprisonment."

Section 10. Appropriations. - To carry out the provisions of this Act, the amount necessary for the automated system shall be charged against the current year's appropriations of the Commission.

Thereafter, such sums as may be necessary for the continuous implementation of this Act shall be included in the Annual General Appropriations Act. If the said funds shall not be fully utilized, the same shall continue to be appropriated for the electoral modernization and shall not revert to the General Fund.

Section 11. Separability Clause. - If, for any reason, any section or provision of this Act is declared invalid or unconstitutional, the remainder thereof shall not be affected by such declaration.

Section 12. Repealing Clause. - All laws, presidential decrees, executive orders, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Section 13. Effectivity. - This Act shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

Approved: