

[REPUBLIC ACT NO. 9369, January 23, 2007]

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"

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

SECTION 1. Section 1 of Republic Act No. 8436 is hereby amended to read as follows:

"SECTION 1. *Declaration of Policy* - It is the policy of the State to ensure free, orderly, honest, peaceful, credible and informed elections, plebiscites, referenda, recall and other similar electoral exercises by improving on the election process and adopting systems, which shall involve the use of an automated election system that will ensure the secrecy and sanctity of the ballot and all election, consolidation and transmission documents in order that the process shall be transparent and credible and that the results shall be fast, accurate and reflective of the genuine will of the people.

"The State recognizes the mandate and authority of the Commission to prescribe the adoption and use of the most suitable technology of demonstrated capability taking into account the situation prevailing" in the area and the funds available for the purpose."

SEC. 2. Section 2 of Republic Act No. 8436 is hereby amended to read as follows:

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

"1. Automated election system, hereinafter referred to as AES - a system using appropriate technology which has been demonstrated in the voting, counting, consolidating, canvassing, and transmission of election results, and other electoral processes;

"2. *Electronic transmission* - conveying data in electronic form from one location to another;

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

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

"5. *Statement of votes* - a document containing the votes obtained by candidates in each precinct in a city/municipality;

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

"7. *Paper-based election system* - a type of automated election system that uses paper ballots, records and counts votes, tabulates, consolidates/ canvasses and transmits electronically the results of the vote count;"

"8. *Direct recording electronic election system* - a type of automated election system that uses electronic ballots, records votes by means of a ballot display provided with mechanical or electro-optical components that can be activated by the voter, processes data by means of a computer program, records voting data and ballot images, and transmits voting results electronically;

"9. *Counting center* - a public place within the city/municipality or in such other places as may be designated by the Commission where the official ballots cast in various precincts of the city/ municipality shall be counted. Polling places or voting centers may also be designated as counting centers;

"10. *Continuity plan* - a list of contingency measures, and the policies for activation of such, that are put in place to ensure continuous operation of the AES;

"11. *Disabled voters* - a person with impaired capacity to use the AES;

"12. *Source code* - human readable instructions that define what the computer equipment will do; and

"13. *Station* - refers to a polling place, counting center, municipal or provincial canvassing center."

SEC. 3. Section 3 of Republic Act No. 8436 is hereby amended to read as follows:

"SEC. 3. *Board of Election Inspectors.* - Where AES shall be adopted, at least one member of the Board of Election Inspectors shall be an information technology-capable person, who is trained or certified by the DOST to use the AES. Such certification shall be issued by the DOST, free of charge."

SEC. 4. Section 4 of Republic Act No. 8436 is hereby deleted. The succeeding sections are hereby renumbered accordingly.

SEC. 5. Section 5 of Republic Act No. 8436 is hereby amended to read as follows:

"SEC. 4. *Information Technology Support for the Board of Canvassers.* - To implement the AES, each board of canvassers shall be assisted by an information technology-capable person authorized to operate the equipment adopted for the elections. The Commission shall deputize information technology personnel from among the agencies and instrumentalities of the government, including government-owned and controlled corporations. The *per diem* of the deputized personnel shall be the same as that of the members of the board of canvassers."

SEC. 6. Section 6 of Republic Act No. 8436 is hereby amended to read as follows:

"SEC. 5. *Authority to Use an Automated Election System.* - To carry out the above-stated policy, the Commission on Elections, herein referred to as the Commission, is hereby authorized to use an automated election system or systems in the same election in different provinces, whether paper-based or a direct recording electronic election system as it may deem appropriate and practical for the process of voting, counting of votes and canvassing/consolidation and transmittal" of results of electoral exercises; *Provided*, That for the regular national and local elections, which shall be held immediately after the effectivity of this Act, the AES shall be used in at least two highly urbanized cities and two provinces each in Luzon, Visayas and Mindanao, to be chosen by the Commission: *Provided, further*, That local government units whose officials have been the subject of administrative charges within sixteen (16) months prior to the May 14, 2007 elections shall not be chosen: *Provided finally*, That no area shall be chosen without the consent of the Sanggunian of the local government unit concerned. The term local government unit as used in this provision shall refer to a highly urbanized city or province. In succeeding regular national or local elections, the AES shall be implemented nationwide."

SEC. 7. Section 7 of Republic Act No. 8436 is hereby amended to read as follows:

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

- a. Adequate security against unauthorized access;
- b. Accuracy in recording and reading of votes as well as in the tabulation, consolidation/canvassing, electronic transmission, and storage of results;
- c. Error recovery in case of non-catastrophic failure of device;
- d. System integrity which ensures physical stability and functioning of the vote recording and counting process;

- e. Provision for voter verified paper audit trail;
- f. System auditability which provides supporting documentation for verifying the correctness of reported election results;
- g. An election management system for preparing ballots and programs for use in the casting and counting of votes and to consolidate, report and display election results in the shortest time possible;
- h. Accessibility to illiterates and disabled voters;
- i. Vote tabulating program for election, referendum or plebiscite;
- j. Accurate ballot counters;
- k. Data retention provision;
- l. Provide for the safekeeping, storing and archiving of physical or paper resource used in the election process;
- m. Utilize or generate official ballots as herein defined;
- n. Provide the voter a system of verification to find out whether or not the machine has registered his choice; and
- o. Configure access control for sensitive system data and functions.

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

SEC. 8. A new Section 7 is hereby provided 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 secure communication channels as recommended by the Advisory Council, to ensure authentication and integrity of transmissions."

SEC. 9. New Sections 8, 9, 10 and 11 are hereby provided 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.

"The Council shall be composed of the following members, who must be registered Filipino voters, of known independence, competence and probity:

"(a) The Chairman of the Commission on Information and Communications Technology (CICT) who shall act as the chairman of the Council;

"(b) One member from the Department of Science and Technology;

"(c) One member from the Department of Education;

"(d) One member representing the academe, to be selected by the chair

of the Advisory Council from among the list of nominees submitted by the country's academic institutions;

"(e) Three members representing ICT professional organizations to be selected by the chair of the Advisory Council from among the list of nominees submitted by Philippine-based ICT professional organizations. Nominees shall be individuals, at least one of whom shall be experienced in managing or implementing large-scale IT projects.

"(f) Two members representing nongovernmental electoral reform organizations, to be selected by the chair of the Advisory Council from among the list of nominees submitted by the country's nongovernmental electoral reform organizations.

"A person who is affiliated with any political party or candidate for any national position, or is related to a candidate for any national position by affinity or consanguinity within the fourth civil degree, shall not be eligible for appointment or designation to the Advisory Council. Should any such situation arise at any time during the incumbency of a member, the designation or appointment of that member shall *ipso facto* be terminated.

"Any member of the Advisory Council is prohibited from engaging, directly or indirectly, with any entity that advocates, markets, imports, produces or in any manner handles software, hardware or any equipment that maybe used for election purposes for personal gain.

"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.

"The Council may avail itself of the expertise and services of resource persons who are of known independence, competence and probity, are nonpartisan, and do not possess any of the disqualifications applicable to a member of the Advisory Council as provided herein. The resource persons shall also be subject to the same prohibitions and penalties as the members of the Advisory Council.

"The Commission on Information and Communications Technology (CICT), shall include in its annual appropriation the funds necessary to enable the Council to effectively perform its functions."

"SEC. 9. *Functions of the Advisory Council.* - The Council shall have the following functions:

1. Recommend the most appropriate, secure, applicable and cost-effective technology to be applied in the AES, in whole or in part, at that specific point in time.
2. Participate as nonvoting members of the Bids and Awards Committee in the conduct of the bidding process for the AES. Members of the Advisory Council representing the ICT professional