



## Legislation Text

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**File #:** Res 0774-2023, **Version:** \*

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### Res. No. 774

Resolution calling on the New York State Board of Elections to refrain from certifying and the New York City Board of Elections to refrain from purchasing: direct recording electronic voting machines; voting machines that encode votes cast on a paper ballot as barcodes or QR codes; and any voting machines that do not utilize or create individual, voter-verifiable paper ballots that are marked by the voter by hand or through the use of an accessible nontabulating ballot marking device.

By the Public Advocate (Mr. Williams) and Council Members Louis, Schulman and Riley

Whereas, Problems with ballots during the 2000 Presidential election led to passage of the federal Help America Vote Act (HAVA) in 2002; and

Whereas, HAVA provided states with funding to upgrade and modernize their voting systems; and

Whereas, Many states used HAVA funds to purchase direct-recording electronic (DRE) voting machines that election officials believed would prevent the type of ballot issues seen in the 2000 Presidential election; and

Whereas, Almost all of the states that originally purchased DRE machines that did not produce a voter-verified paper ballot have already begun to phase out their use; and

Whereas, The Council of the City of New York unanimously adopted Resolution No. 131-A on March 14, 2007, which urged the New York State Board of Elections (SBOE) and the New York City Board of Elections (NYCBOE) to certify and purchase precinct-based optical scan voting systems as the new voting technology for the City of New York; and

Whereas, precinct-based optical scan voting systems utilize hand-marked, machined-scanned, voter-verifiable paper ballots; and

Whereas, Consistent with Resolution No. 131-A, New York declined to adopt any DRE voting machines

when it used its HAVA funding to replace lever machines, and instead adopted more reliable, hand-marked, machine-scanned, individual, voter-verifiable paper ballots and accessible nontabulating ballot marking devices (BMDs); and

Whereas, DRE voting machines require all voters to mark their ballot on a touch screen in lieu of paper ballots; and

Whereas, Electronic touch screens are prone to errors and malfunctions in ways that paper ballots are not; and

Whereas, In New York State each local board of elections must purchase their own voting equipment; and

Whereas, Pursuant to Part 6210.19 of the SBOE regulations, on Election Day each polling site is required to have one DRE for every 550 registered voters; however, poll sites only require one optical scanner for up to 4,000 election day voters, therefore many more DREs or other touch screen voting machines would have to be purchased and maintained to serve all the voters in the City of New York than if ballot scanners were used instead; and

Whereas, It has been estimated that purchasing enough DREs or other touch screen voting machines to serve all the voters of the City of New York would cost millions of dollars more than purchasing enough ballot scanners to serve all the City's voters; and

Whereas, A new category of "hybrid" touch screen voting machines (also known as "tabulating BMDs") that print out a paper record of the voter's votes encoded as a barcode or a QR code that is then cast and counted, but is not readable by the voter, has been proposed for certification by the SBOE, and for purchase by the NYCBOE; and

Whereas, A barcode printed on a paper ballot may be used to inform the ballot scanner about that ballot's Election District, but do not allow a voters to verify that their own selections were correctly recorded;

and

Whereas, Section 7-202 of the New York State Election Law requires any voting machine or system approved by the SBOE to “provide the voter an opportunity to privately and independently verify votes selected and the ability to privately and independently change such votes or correct any error before the ballot is cast and counted”; and

Whereas, Studies have shown that even if DREs or touch screen voting machines, such as the Express Vote XL, which was recently certified by the SBOE print out the votes selected on the screen as text, voters often fail or lack the time to review their ballot to determine that the choices on the screen match those on the slip of paper, and this printed text is not counted on election night anyway; and

Whereas, Another one of these “hybrid” voting machines (also known as “tabulating BMDs”) passes hand-marked paper ballots under a printer that, if malfunctioning or hacked, could print “phantom” marks on a paper ballot without voters’ consent or verification, causing any vote marked on the paper ballots to be questionable, even if audited or recounted by hand; and

Whereas, Any voting machines that do not utilize a paper ballot where the voter can verify their choices before the ballot is cast and counted are considered more vulnerable to foreign interference than voting machines that utilize an individual, voter-verifiable paper ballots; and

Whereas, Individual, voter-verifiable paper ballots are necessary to conduct post-election audits and recounts; and

Whereas, Election security experts consider individual, voter-verifiable hand-marked paper ballots the gold standard for election security; and

Whereas, The expected life span of voting equipment is generally between 10 and 20 years; and

Whereas, The voting equipment currently in use in New York is over 15 years old; and

Whereas, The voting equipment used in New York is at or near the end of its expected lifespan; and

Whereas, The outdated voting equipment used in New York frequently breaks down, causing long lines at polling sites; and

Whereas, As the outdated voting machines currently being used in New York break down, they will become more and more difficult to fix or replace; and

Whereas, According to cybersecurity expert Jeremy Epstein, outdated software like what is being used on New York is more vulnerable to attack than newer updated software; and

Whereas, New York will need to replace its outdated voting equipment in the next few years; and

Whereas, Local boards of election may only purchase voting equipment that has been certified by the SBOE; and

Whereas, The SBOE has recently certified voting systems that utilize and create individual, voter-verifiable paper ballots that are marked by the voter by hand or through the use of an accessible nontabulating ballot marking device and at least two more such approvals are expected; and

Whereas, SBOE Co-Chair and former NYC Election Commissioner Douglas A. Kellner has stated publicly that he: (1) strongly supports removing from New York law authorization for direct recording electronic voting devices, even when those devices create a voter verifiable paper record; (2) agrees that as a matter of design, it would be preferable to separate ballot marking devices from the scanner that reads and tabulates the ballot; and (3) agrees that New York law should guarantee that every voter has the right to choose either to hand-mark a paper ballot or to use a ballot marking device to mark a ballot; and

Whereas, New York Election Law does not preclude the approval by the SBOE of voting machines consistent with this Resolution; and

Whereas, Section 7-201 the Election Law authorizes the SBOE to conduct its own examination of voting systems and decide by a vote of the Commissioners whether or not to approve them; and

Whereas, Many good-government groups such as Common Cause New York, Citizens for Voting

Integrity NY, Free Speech for People, and The Brennan Center for Justice have publicly urged the SBOE to refrain from certifying voting machines that do not produce a voter-verified paper ballot; now, therefore, be it

Resolved, That the Council of the City of New York calls on the New York State Board of Elections to refrain from certifying and the New York City Board of elections to refrain from purchasing: direct recording electronic voting machines; voting machines that encode votes cast on a paper ballot as barcodes or QR codes; and any voting machines that do not utilize or create individual, voter-verifiable paper ballots that are marked by the voter by hand or through the use of an accessible nontabulating ballot marking device.

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