

COMMITTEE SUBSTITUTE

for

**H. B. 3135**

---

(BY DELEGATE(S) MARCUM, R. PHILLIPS, SPONAUGLE,  
MANYPENNY, LONGSTRETH AND SKINNER)

---

(Originating in the Committee on the Judiciary)

[March 28, 2013]

A BILL to amend and reenact §3-4A-2, §3-4A-8, §3-4A-23 and §3-4A-27 of the Code of West Virginia, 1931, as amended, all relating generally to electronic voting systems; updating and clarifying the definitions related to electronic voting systems; updating language related to approval of electronic voting systems; correcting internal references; updating and clarifying language related to proceedings at the central counting center.

*Be it enacted by the Legislature of West Virginia:*

That §3-4A-2, §3-4A-8, §3-4A-23, and §3-4A-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

**§3-4A-2. Definitions.**

1 As used in this article, unless otherwise specified:

2 (1) “Automatic tabulating equipment” means all apparatus  
3 necessary to electronically count votes recorded on ballots, ~~and~~  
4 tabulate the results and produce necessary reports;

5 (2) “Ballot” means ~~an electronic image or paper on which~~  
6 ~~votes may be recorded by means of perforating or marking with~~  
7 ~~electronically sensible ink or pencil or a screen upon which votes~~  
8 ~~may be recorded by means of a stylus or by means of touch a~~  
9 logical or physical device that presents races, candidates, and  
10 contests and facilitates the capture of the voter’s choices or  
11 intent;

12 (3) “Central counting center” means a facility equipped with  
13 suitable and necessary automatic tabulating equipment, selected  
14 by the county commission, for the electronic counting of votes  
15 recorded on ballots;

16 (4) “Electronic poll book” means an electronic device  
17 containing ~~the same~~ voter registration information ~~maintained by~~  
18 ~~the county clerk in a printed poll book~~ for the purpose of  
19 facilitating voting at the precinct;

20 (5) “Electronic voting system” is ~~a means of conducting an~~  
21 ~~election whereby votes are recorded on ballots by means of an~~  
22 ~~electronically sensible marking ink, by perforating or are~~  
23 ~~recorded on equipment that registers votes on a computer disk,~~  
24 ~~or by touching a screen with a stylus or by means of touch, and~~  
25 ~~votes are subsequently counted by automatic tabulating equip-~~  
26 ~~ment at the central counting center~~ one or more integrated  
27 devices that utilize an electronic component for the following  
28 functions: Ballot presentation, vote capture, vote recording and  
29 tabulation;

30 (6) “Standard validation test deck” means a group of ballots  
31 wherein all voting possibilities which can occur in an election  
32 are represented; ~~and~~

33 (7) “Vote-recording device” means equipment ~~in which~~  
34 ~~ballots are placed to allow a voter to record his or her vote by~~  
35 ~~electronically sensible ink, or pencil, or a screen upon which~~

36 ~~votes may be recorded by means of a stylus or by means of touch~~  
37 that captures and records voter intent by marking a screen to  
38 record selections or by using electronically sensible ink to mark  
39 selections; and

40 (8) “Voter verified paper audit trail” means a physical  
41 printout on which the voter’s ballot choices, as registered by a  
42 direct recording device, are recorded. This shall be visible to the  
43 voter and shall be securely locked to avoid tampering.

**§3-4A-8. Approval of electronic voting system by State Election  
Commission; expenses; compensation of persons  
examining system.**

1 (a) Any person or corporation owning or interested in any  
2 electronic voting system may apply to the State Election  
3 Commission so that the system may be examined and a report be  
4 made on its accuracy, efficiency, capacity and safety. Upon the  
5 written application of any vendor tendered to the Secretary of  
6 State or to any clerks in his or her office in charge of receiving  
7 filings for any purpose, the Secretary of State shall fix a date,  
8 time and place, not more than thirty days after the receipt of the  
9 application, for a meeting of the State Election Commission for  
10 mutual consideration of the application. The Secretary of State

11 shall mail notice of the hearing by certified mail to each member  
12 of the commission.

13 (b) The State Election Commission shall appoint two  
14 qualified computer experts who are not members of the same  
15 political party to examine the system and make full reports on  
16 the system to the commission within ~~thirty~~ ninety days from the  
17 date the State Election Commission approves the consideration  
18 of the application. They shall state in the report whether the  
19 examined system complies with the requirements of this article  
20 and the federal agency responsible for certifying voting systems  
21 and can be safely used by voters at elections under the conditions  
22 prescribed in this article. If the report is in the affirmative on that  
23 question, the commission may approve the system and adopt a  
24 system of its make and design for use at elections as provided in  
25 this article: *Provided*, That under no circumstances may a system  
26 be approved that is not capable of accurately tabulating returns  
27 based upon all possible combinations of voting patterns ~~includ-~~  
28 ~~ing, but not limited to, crossover voting and in accordance with~~  
29 ~~section five, article six of this chapter.~~ The vendor of the  
30 approved system shall provide the State Election Commission  
31 with a report, due on January 1, of each even-numbered year,

32 that outlines any problem that has been experienced with the  
33 equipment by any jurisdiction in the state or in any jurisdiction  
34 outside the state that uses the same or a similar version of the  
35 equipment that has been certified for use in this state.

36 (c) No electronic voting system may be used at any election  
37 unless it has been approved under this section or its former  
38 provisions and by the appropriate agency of the federal govern-  
39 ment whose purpose is to review and issue a certificate of  
40 approval. Each of the two qualified computer experts appointed  
41 by the commission are entitled to reasonable compensation and  
42 expenses in making the examination and report, to be paid in  
43 advance of the examination required by subsection (b) of this  
44 section by the person or corporation applying for the examina-  
45 tion. This sum shall be the sole compensation to be received by  
46 any expert for any work performed pursuant to this section. The  
47 State Election Commission shall determine the compensation at  
48 the time of approving the application for certification.

**§3-4A-23. Persons prohibited about voting booths; penalties.**

1 Excepting election officials acting under authority of  
2 sections nineteen, twenty ~~twenty-one~~ and twenty-two of this  
3 article in the conduct of the election, and qualified persons

4 assisting voters pursuant to section twenty-two of this article, no  
5 person other than the voter may be in, about or within five feet  
6 of the voting booth during the time the voter is voting at any  
7 election. While the voter is voting, no person may communicate  
8 with the voter in any manner and the voter may not communicate  
9 with any other person or persons. No person may enter a voting  
10 booth with any recording or electronic device in order to record  
11 or interfere with the voting process. Any conduct or action of an  
12 election official about or around the voting booth while the voter  
13 is in the process of voting, except as expressly provided in this  
14 article, is a violation of this section. Any person violating the  
15 provisions of this section is guilty of a misdemeanor and, upon  
16 conviction thereof, shall be fined not more than \$1,000 or ~~be~~  
17 ~~sentenced to imprisonment~~ confined in the county jail for a  
18 ~~period~~ not more than twelve months, or ~~in the discretion of the~~  
19 ~~court, shall be subject to both such fine and imprisonment~~ both  
20 fined and confined.

**§3-4A-27. Proceedings at the central counting center.**

- 1 (a) All proceedings at the central counting center are to be
- 2 under the supervision of the clerk of the county commission and

3 are to be conducted under circumstances which allow observa-  
4 tion from a designated area by all persons entitled to be present.  
5 The proceedings shall take place in a room of sufficient size and  
6 satisfactory arrangement to permit observation. Those persons  
7 entitled to be present include all candidates whose names appear  
8 on the ballots being counted or if a candidate is absent, a  
9 representative of the candidate who presents a written authoriza-  
10 tion signed by the candidate for the purpose and two representa-  
11 tives of each political party on the ballot who are chosen by the  
12 county executive committee chairperson. A reasonable number  
13 of the general public is also freely admitted to the room. In the  
14 event all members of the general public desiring admission to the  
15 room cannot be admitted at one time, the county commission  
16 shall provide for a periodic and convenient rotation of admission  
17 to the room for observation, to the end that each member of the  
18 general public desiring admission, during the proceedings at the  
19 central counting center, is to be granted admission for reasonable  
20 periods of time for observation: *Provided*, That no person except  
21 those authorized for the purpose may touch any ballot ~~or ballot~~  
22 ~~card~~ or other official records and papers utilized in the election  
23 during observation.



24 (b) All persons who are engaged in processing and counting  
 25 the ballots are to work in teams consisting of two persons of  
 26 opposite political parties, and are to be deputized in writing and  
 27 take an oath that they will faithfully perform their assigned  
 28 duties. These deputies are to be issued an official badge or  
 29 identification card which is assigned an identity control number  
 30 and the deputies are to prominently wear on his or her outer  
 31 garments the issued badge or identification card. Upon comple-  
 32 tion of the deputies' duties, the badges or identification cards are  
 33 to be returned to the county clerk.

34 (c) Ballots are to be handled and tabulated and the write-in  
 35 votes tallied according to procedures established by the Secre-  
 36 tary of State, subject to the following requirements:

37 (1) In systems using ballots marked with electronically  
 38 sensible ink, ballots are to be removed from the ballot boxes and  
 39 stacked for the tabulator which separates ballots containing  
 40 marks for a write-in position. Immediately after tabulation, the  
 41 valid write-in votes are to be tallied. No write-in vote may be  
 42 counted for an office unless the voter has entered the name of an  
 43 official write-in candidate for that office on the line provided;  
 44 either by writing, affixing a sticker or placing an ink-stamped

45 impression thereon;

46 (2) In systems using ballots in which votes are recorded  
47 upon screens with a stylus or by means of touch, the ~~personal-~~  
48 ~~ized electronic~~ ballots are to be ~~removed from the containers and~~  
49 ~~stacked for the tabulator~~ tabulated according to the processes of  
50 the system. Systems using ballots in which votes are recorded  
51 upon screens with a stylus or by means of touch are to tally  
52 write-in ballots simultaneously with the other ballots;

53 (3) When more than one person is to be elected to an office  
54 and the voter desires to cast write-in votes for more than one  
55 official write-in candidate for that office, ~~a single punch or mark,~~  
56 ~~as~~ the voter shall mark the location appropriate for the voting  
57 system, in the write-in location for that office. ~~is sufficient for all~~  
58 ~~write-in choices~~. When there are multiple write-in votes for the  
59 same office and the combination of choices for candidates on the  
60 ballot and write-in choices for the same office exceed the  
61 number of candidates to be elected, the ballot is to be duplicated  
62 or hand counted, with all votes for that office rejected;

63 (4) Write-in votes for nomination for any office and write-in  
64 votes for any person other than an official write-in candidate are  
65 to be disregarded;

66 (5) When a voter casts a straight ticket vote and also marks  
 67 the location for a write-in vote for an office, the straight ticket  
 68 vote for that office is to be rejected, whether or not a vote can be  
 69 counted for a write-in candidate; and

70 (6) Official write-in candidates are those who have filed a  
 71 write-in candidate's certificate of announcement and have been  
 72 certified according to the provisions of section four-a, article six  
 73 of this chapter.

74 (d) If any ballot ~~card~~ is damaged or defective so that it  
 75 cannot properly be counted by the automatic tabulating equip-  
 76 ment, a true duplicate copy is to be made of the damaged ballot  
 77 ~~card~~ in the presence of representatives of each political party on  
 78 the ballot and substituted for the damaged ballot ~~card~~. All  
 79 duplicate ~~ballot cards~~ ballots are to be clearly labeled "duplicate"  
 80 and are to bear a serial number which is recorded on the dam-  
 81 aged or defective ballot ~~card~~ and on the replacement ballot. ~~card~~.

82 (e) The returns printed by the automatic tabulating equip-  
 83 ment at the central counting center, to which have been added  
 84 write-in and other valid votes, are, when certified by the clerk of  
 85 the county commission, to constitute the ~~official~~ unofficial

86 preliminary returns of ~~each precinct or election district~~ the  
87 county. ~~Further, all the returns are to be printed on a precinct~~  
88 ~~basis. Periodically throughout and upon~~ Upon completion of the  
89 count, the returns are to be open to the public by posting a  
90 summary of the returns as have been tabulated precinct by  
91 precinct at the central counting center. Upon completion of the  
92 canvass, the returns are to be posted ~~in the same manner as~~  
93 tabulated precinct by precinct.

94 (f) If for any reason it becomes impracticable to count all or  
95 a part of the ballots with tabulating equipment, the county  
96 commission may direct that they be counted manually, following  
97 as far as practicable the provisions governing the counting of  
98 paper ballots.

99 (g) As soon as possible after the completion of the count, the  
100 clerk of the county commission shall have the vote recording  
101 devices properly boxed or securely covered and removed to a  
102 proper and secure place of storage.