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HB 4721

FILED

2006 MAR 30 A 10:03

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



# ENROLLED

## House Bill No. 4721

(By Delegates Palumbo, Amores and Walters)



Passed March 10, 2006

In Effect from Passage

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**E N R O L L E D**

**H. B. 4721**

(BY DELEGATES PALUMBO, AMORES AND WALTERS)

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[Passed March 10, 2006; in effect from passage.]

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AN ACT to amend and reenact §3-4A-19 of the Code of West Virginia, 1931, as amended, relating to the authorization of special messengers appointed by the County Clerk to deliver the ballot box to the central county center.

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

That §3-4A-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

**§ 3-4A-19. Conducting electronic voting system elections generally; duties of election officers; penalties.**

- 1 (a) The election officers shall constantly and diligently
- 2 maintain a watch in order to see that no person votes more than
- 3 once and to prevent any voter from occupying the voting booth
- 4 for more than five minutes.

5 (b) In primary elections, before a voter is permitted to  
6 occupy the voting booth, the election commissioner represent-  
7 ing the party to which the voter belongs shall direct the voter to  
8 the vote recording device or supply the voter with a ballot, as  
9 may be appropriate, which will allow the voter to vote only for  
10 the candidates who are seeking nomination on the ticket of the  
11 party with which the voter is affiliated or for unaffiliated voters  
12 in accordance with section thirty-one, article two of this  
13 chapter.

14 (c) The poll clerk shall issue to each voter when he or she  
15 signs the pollbook a card or ticket numbered to correspond to  
16 the number on the pollbook of the voter and in the case of a  
17 primary election, indicating the party affiliation of the voter,  
18 which numbered card or ticket is to be presented to the election  
19 commissioner in charge of the voting booth.

20 (d) One hour before the opening of the polls the precinct  
21 election commissioners shall arrive at the polling place and set  
22 up the voting booths in clear view of the election commission-  
23 ers. Where applicable, they shall open the vote recording  
24 devices, place them in the voting booths, examine them to see  
25 that they have the correct ballots or ballot labels, where  
26 applicable by comparing them with the sample ballots, and  
27 determine whether they are in proper working order. They shall  
28 open and check the ballots, supplies, records and forms and post  
29 the sample ballots or ballot labels and instructions to voters.  
30 Upon ascertaining that all ballots, supplies, records and forms  
31 arrived intact, the election commissioners shall certify their  
32 findings in writing upon forms provided and collected by the  
33 clerk of the county commission over their signatures to the  
34 clerk of the county commission. Any discrepancies are to be  
35 noted and reported immediately to the clerk of the county  
36 commission. The election commissioners shall then number in  
37 sequential order the ballot stub of each ballot in their possession  
38 and report in writing to the clerk of the county commission the

39 number of ballots received. They shall issue the ballots in  
40 sequential order to each voter.

41 (e) Where applicable, each voter shall be instructed how to  
42 operate the vote recording device before he or she enters the  
43 voting booth.

44 (f) Where applicable, any voter who spoils, defaces or  
45 mutilates the ballot delivered to him or her, on returning the  
46 ballot to the poll clerks, shall receive another in its place. Every  
47 person who does not vote any ballot delivered to him or her  
48 shall, before leaving the election room, return the ballot to the  
49 poll clerks. When a spoiled or defaced ballot is returned, the  
50 poll clerks shall make a minute of the fact on the pollbooks, at  
51 the time, write the word "spoiled" across the face of the ballot  
52 and place it in an envelope for spoiled ballots.

53 Immediately on closing the polls, the election commission-  
54 ers shall ascertain the number of spoiled ballots during the  
55 election and the number of ballots remaining not voted. The  
56 election commissioners shall also ascertain from the pollbooks  
57 the number of persons who voted and shall report, in writing  
58 signed by them to the clerk of the county commission, any  
59 irregularities in the ballot boxes, the number of ballots cast, the  
60 number of ballots spoiled during the election and the number of  
61 ballots unused. All unused ballots are to be returned at the same  
62 time to the clerk of the county commission who shall count  
63 them and record the number. All unused ballots shall be stored  
64 with the other election materials and destroyed at the expiration  
65 of twenty-two months.

66 (g) Each commissioner who is a member of an election  
67 board which fails to account for every ballot delivered to it is  
68 guilty of a misdemeanor and, upon conviction thereof, shall be  
69 fined not more than one thousand dollars or confined in the  
70 county or regional jail for not more than one year, or both.

71 (h) The board of ballot commissioners of each county, or  
72 the chair of the board, shall preserve the ballots that are left  
73 over in their hands, after supplying the precincts as provided,  
74 until the close of the polls on the day of election and shall  
75 deliver them to the clerk of the county commission who shall  
76 store them with the other election materials and destroy them at  
77 the expiration of twenty-two months.

78 (i) Where ballots are used, the voter, after he or she has  
79 marked his or her ballot, shall, before leaving the voting booth,  
80 place the ballot inside the envelope provided for this purpose,  
81 with the stub extending outside the envelope, and return it to an  
82 election commissioner who shall remove the stub and deposit  
83 the envelope with the ballot inside in the ballot box. No ballot  
84 from which the stub has been detached may be accepted by the  
85 officer in charge of the ballot box, but the ballot shall be  
86 marked "spoiled" and placed with the spoiled ballots. If an  
87 electronic voting system is used that utilizes a screen on which  
88 votes may be recorded by means of a stylus or by means of  
89 touch and the signal warning that a voter has attempted to cast  
90 his or her ballot has failed to do so properly has been activated  
91 and the voter has departed the polling place and cannot be  
92 recalled by a poll clerk to complete his or her ballot while the  
93 voter remains physically present in the polling place, then two  
94 election commissioners of different registered party affiliations,  
95 two poll clerks of different registered party affiliations or an  
96 election commissioner and a poll clerk of different registered  
97 party affiliations shall spoil the ballot.

98 (j) The precinct election commissioners shall prepare a  
99 report in quadruplicate of the number of voters who have voted  
100 and, where electronic voting systems are used that utilize a  
101 screen on which votes may be recorded by means of a stylus or  
102 by means of touch, the number of ballots that were spoiled, as  
103 indicated by the pollbooks, and shall place two copies of this  
104 report in the ballot box or where electronic voting systems are

105 used that utilize a screen upon which votes may be recorded by  
106 means of a stylus or by means of touch, shall place two copies  
107 of this report and the electronic ballot devices in a container  
108 provided by the clerk of the county commission, which there-  
109 upon is to be sealed with a paper seal signed by the election  
110 commissioners to ensure that no additional ballots may be  
111 deposited or removed from the ballot box. Two election  
112 commissioners of different registered party affiliations or two  
113 special messengers of different registered party affiliations  
114 appointed by the clerk of the county commission, shall forth-  
115 with deliver the ballot box or container to the clerk of the  
116 county commission at the central counting center and receive a  
117 signed numbered receipt therefor. The receipt must carefully set  
118 forth in detail any and all irregularities pertaining to the ballot  
119 boxes or containers and noted by the precinct election officers.

120 The receipt is to be prepared in duplicate, a copy of which  
121 remains with the clerk of the county commission who shall  
122 have any and all irregularities noted. The time of their departure  
123 from the polling place is to be noted on the two remaining  
124 copies of the report, which are to be immediately mailed to the  
125 clerk of the county commission.

126 (k) The pollbooks, register of voters, unused ballots, spoiled  
127 ballots and other records and supplies are to be delivered to the  
128 clerk of the county commission, all in conformity with the  
129 provisions of this section.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Chandy White*

Chairman Senate Committee

*W. Burr*

Chairman House Committee

Originating in the House.

In effect from passage.

*Daniel E. Glavin*

Clerk of the Senate

*Bryan M. Day*

Clerk of the House of Delegates

*Carl Ray Tomblin*

President of the Senate

*Robert S....*

Speaker of the House of Delegates

The within is approved this the 28<sup>th</sup> day of March, 2006.

*[Signature]*

Governor

PRESENTED TO THE  
GOVERNOR

MAR 22 2006

Time 3:55 