

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **for**

4 **H. B. 3135**

5  
6 (By Delegates Marcum, R. Phillips, Sponaugle,  
7 Manypenny, Longstreth and Skinner)

8 [Passed April 12, 2013; in effect ninety days from passage.]

9  
10 AN ACT to amend and reenact §3-4A-2, §3-4A-8, §3-4A-23 and §3-4A-27  
11 of the Code of West Virginia, 1931, as amended, all relating  
12 generally to electronic voting systems; updating and  
13 clarifying the definitions related to electronic voting  
14 systems; defining terms; adjusting requirements related to  
15 approval of electronic voting systems; increasing the time  
16 within which the State Election Commission must appoint  
17 certain computer experts; correcting internal code references;  
18 updating and clarifying language related to proceedings at the  
19 central counting center; and making other technical  
20 clarifications.

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

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

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

2 **§3-4A-2. Definitions.**

3 As used in this article, unless otherwise specified:

4 (1) "Automatic tabulating equipment" means all apparatus  
5 necessary to electronically count votes recorded on ballots,  
6 tabulate the results and produce necessary reports;

7 (2) "Ballot" means a logical or physical device that presents  
8 races, candidates and contests, and facilitates the capture of the  
9 voter's choices or intent;

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

14 (4) "Electronic poll book" means an electronic device  
15 containing voter registration information for the purpose of  
16 facilitating voting at the precinct;

17 (5) "Electronic voting system" is one or more integrated  
18 devices that utilize an electronic component for the following  
19 functions: Ballot presentation, vote capture, vote recording and  
20 tabulation;

21 (6) "Standard validation test deck" means a group of ballots  
22 wherein all voting possibilities which can occur in an election are  
23 represented;

24 (7) "Vote-recording device" means equipment that captures and

1 records voter intent by marking a screen to record selections or by  
2 using electronically sensible ink to mark selections; and

3 (8) "Voter verified paper audit trail" means a physical  
4 printout on which the voter's ballot choices, as registered by a  
5 direct recording device, are recorded. This shall be visible to the  
6 voter and shall be securely locked to avoid tampering.

7 **§3-4A-8. Approval of electronic voting system by State Election**  
8 **Commission; expenses; compensation of persons**  
9 **examining system.**

10 (a) Any person or corporation owning or interested in any  
11 electronic voting system may apply to the State Election Commission  
12 so that the system may be examined and a report be made on its  
13 accuracy, efficiency, capacity and safety. Upon the written  
14 application of any vendor tendered to the Secretary of State or to  
15 any clerks in his or her office in charge of receiving filings for  
16 any purpose, the Secretary of State shall fix a date, time and  
17 place, not more than thirty days after the receipt of the  
18 application, for a meeting of the State Election Commission for  
19 mutual consideration of the application. The Secretary of State  
20 shall mail notice of the hearing by certified mail to each member  
21 of the commission.

22 (b) The State Election Commission shall appoint two qualified  
23 computer experts who are not members of the same political party to  
24 examine the system and make full reports on the system to the

1 commission within ninety days from the date the State Election  
2 Commission approves the consideration of the application. They  
3 shall state in the report whether the examined system complies with  
4 the requirements of this article and the federal agency responsible  
5 for certifying voting systems and can be safely used by voters at  
6 elections under the conditions prescribed in this article. If the  
7 report is in the affirmative on that question, the commission may  
8 approve the system and adopt a system of its make and design for  
9 use at elections as provided in this article: *Provided*, That under  
10 no circumstances may a system be approved that is not capable of  
11 accurately tabulating returns based upon all possible combinations  
12 of voting patterns. The vendor of the approved system shall  
13 provide the State Election Commission with a report, due on January  
14 1, of each even-numbered year, that outlines any problem that has  
15 been experienced with the equipment by any jurisdiction in the  
16 state or in any jurisdiction outside the state that uses the same  
17 or a similar version of the equipment that has been certified for  
18 use in this state.

19 (c) No electronic voting system may be used at any election  
20 unless it has been approved under this section or its former  
21 provisions and by the appropriate agency of the federal government  
22 whose purpose is to review and issue a certificate of approval.  
23 Each of the two qualified computer experts appointed by the  
24 commission are entitled to reasonable compensation and expenses in

1 making the examination and report, to be paid in advance of the  
2 examination required by subsection (b) of this section by the  
3 person or corporation applying for the examination. This sum shall  
4 be the sole compensation to be received by any expert for any work  
5 performed pursuant to this section. The State Election Commission  
6 shall determine the compensation at the time of approving the  
7 application for certification.

8 **§3-4A-23. Persons prohibited about voting booths; penalties.**

9       Excepting election officials acting under authority of  
10 sections nineteen, twenty and twenty-two of this article in the  
11 conduct of the election, and qualified persons assisting voters  
12 pursuant to section twenty-two of this article, no person other  
13 than the voter may be in, about or within five feet of the voting  
14 booth during the time the voter is voting at any election. While  
15 the voter is voting, no person may communicate with the voter in  
16 any manner and the voter may not communicate with any other person  
17 or persons. No person may enter a voting booth with any recording  
18 or electronic device in order to record or interfere with the  
19 voting process. Any conduct or action of an election official  
20 about or around the voting booth while the voter is in the process  
21 of voting, except as expressly provided in this article, is a  
22 violation of this section. Any person violating the provisions of  
23 this section is guilty of a misdemeanor and, upon conviction  
24 thereof, shall be fined not more than \$1,000 or confined in jail

1 not more than twelve months, or both fined and confined.

2 **§3-4A-27. Proceedings at the central counting center.**

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

1 observation.

2 (b) All persons who are engaged in processing and counting the  
3 ballots are to work in teams consisting of two persons of opposite  
4 political parties, and are to be deputized in writing and take an  
5 oath that they will faithfully perform their assigned duties.  
6 These deputies are to be issued an official badge or identification  
7 card which is assigned an identity control number and the deputies  
8 are to prominently wear on his or her outer garments the issued  
9 badge or identification card. Upon completion of the deputies'  
10 duties, the badges or identification cards are to be returned to  
11 the county clerk.

12 (c) Ballots are to be handled and tabulated and the write-in  
13 votes tallied according to procedures established by the Secretary  
14 of State, subject to the following requirements:

15 (1) In systems using ballots marked with electronically  
16 sensible ink, ballots are to be removed from the ballot boxes and  
17 stacked for the tabulator which separates ballots containing marks  
18 for a write-in position. Immediately after tabulation, the valid  
19 write-in votes are to be tallied. No write-in vote may be counted  
20 for an office unless the voter has entered the name of an official  
21 write-in candidate for that office on the line provided; either by  
22 writing, affixing a sticker or placing an ink-stamped impression  
23 thereon;

24 (2) In systems using ballots in which votes are recorded upon

1 screens with a stylus or by means of touch, the ballots are to be  
2 tabulated according to the processes of the system. Systems using  
3 ballots in which votes are recorded upon screens with a stylus or  
4 by means of touch are to tally write-in ballots simultaneously with  
5 the other ballots;

6 (3) When more than one person is to be elected to an office  
7 and the voter desires to cast write-in votes for more than one  
8 official write-in candidate for that office, the voter shall mark  
9 the location appropriate for the voting system, in the write-in  
10 location for that office. When there are multiple write-in votes  
11 for the same office and the combination of choices for candidates  
12 on the ballot and write-in choices for the same office exceed the  
13 number of candidates to be elected, the ballot is to be duplicated  
14 or hand counted, with all votes for that office rejected;

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

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

22 (6) Official write-in candidates are those who have filed a  
23 write-in candidate's certificate of announcement and have been  
24 certified according to the provisions of section four-a, article



1 six of this chapter.

2 (d) If any ballot is damaged or defective so that it cannot  
3 properly be counted by the automatic tabulating equipment, a true  
4 duplicate copy is to be made of the damaged ballot in the presence  
5 of representatives of each political party on the ballot and  
6 substituted for the damaged ballot. All duplicate ballots are to  
7 be clearly labeled "duplicate" and are to bear a serial number  
8 which is recorded on the damaged or defective ballot and on the  
9 replacement ballot.

10 (e) The returns printed by the automatic tabulating equipment  
11 at the central counting center, to which have been added write-in  
12 and other valid votes, are, when certified by the clerk of the  
13 county commission, to constitute the unofficial preliminary returns  
14 of the county. Upon completion of the count, the returns are to be  
15 open to the public by posting a summary of the returns as have been  
16 tabulated at the central counting center. Upon completion of the  
17 canvass, the returns are to be posted as tabulated precinct by  
18 precinct.

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

24 (g) As soon as possible after the completion of the count, the

1 clerk of the county commission shall have the vote recording  
2 devices properly boxed or securely covered and removed to a proper  
3 and secure place of storage.