

HB 3135

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 3135

(By Delegate(s) Marcum, R. Phillips, Sponaugle,
Manypenny, Longstreth and Skinner)



Passed April 12, 2013

In effect ninety days from passage.

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SECRETARY OF STATE

E N R O L L E D

COMMITTEE SUBSTITUTE

for

H. B. 3135

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

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

AN ACT 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; defining terms; adjusting requirements related to approval of electronic voting systems; increasing the time within which the State Election Commission must appoint certain computer experts; correcting internal code references; updating and clarifying language related to proceedings at the central counting center; and making other technical clarifications.

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,
4 tabulate the results and produce necessary reports;

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

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

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

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

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

22 (7) "Vote-recording device" means equipment that captures
23 and records voter intent by marking a screen to record selections
24 or by using electronically sensible ink to mark selections; and

25 (8) "Voter verified paper audit trail" means a physical
26 printout on which the voter's ballot choices, as registered by a
27 direct recording device, are recorded. This shall be visible to the
28 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, time
8 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 the
16 system to the commission within ninety days from the date the
17 State Election Commission approves the consideration of the
18 application. They shall state in the report whether the examined
19 system complies with the requirements of this article and the
20 federal agency responsible for certifying voting systems and can
21 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. The

28 vendor of the approved system shall provide the State Election
29 Commission with a report, due on January 1, of each
30 even-numbered year, that outlines any problem that has been
31 experienced with the equipment by any jurisdiction in the state or
32 in any jurisdiction outside the state that uses the same or a similar
33 version of the equipment that has been certified for use in this
34 state.

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

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

1 Excepting election officials acting under authority of sections
2 nineteen, twenty and twenty-two of this article in the conduct of
3 the election, and qualified persons assisting voters pursuant to
4 section twenty-two of this article, no person other than the voter
5 may be in, about or within five feet of the voting booth during the
6 time the voter is voting at any election. While the voter is voting,
7 no person may communicate with the voter in any manner and the
8 voter may not communicate with any other person or persons. No
9 person may enter a voting booth with any recording or electronic
10 device in order to record or interfere with the voting process. Any
11 conduct or action of an election official about or around the
12 voting booth while the voter is in the process of voting, except as
13 expressly provided in this article, is a violation of this section.

14 Any person violating the provisions of this section is guilty of a
15 misdemeanor and, upon conviction thereof, shall be fined not
16 more than \$1,000 or confined in jail not more than twelve months,
17 or both 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 observation
4 from a designated area by all persons entitled to be present. The
5 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
10 authorization signed by the candidate for the purpose and two
11 representatives of each political party on the ballot who are
12 chosen by the county executive committee chairperson. A
13 reasonable number of the general public is also freely admitted to
14 the room. In the event all members of the general public desiring
15 admission to the room cannot be admitted at one time, the county
16 commission shall provide for a periodic and convenient rotation
17 of admission to the room for observation, to the end that each
18 member of the general public desiring admission, during the
19 proceedings at the central counting center, is to be granted
20 admission for reasonable periods of time for observation:
21 *Provided*, That no person except those authorized for the purpose
22 may touch any ballot or other official records and papers utilized
23 in the election 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 duties.
28 These deputies are to be issued an official badge or identification
29 card which is assigned an identity control number and the

30 deputies are to prominently wear on his or her outer garments the
31 issued badge or identification card. Upon completion of the
32 deputies' duties, the badges or identification cards are to be
33 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 Secretary
36 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 marks
40 for a write-in position. Immediately after tabulation, the valid
41 write-in votes are to be tallied. No write-in vote may be counted
42 for an office unless the voter has entered the name of an official
43 write-in candidate for that office on the line provided; either by
44 writing, affixing a sticker or placing an ink-stamped impression
45 thereon;

46 (2) In systems using ballots in which votes are recorded upon
47 screens with a stylus or by means of touch, the ballots are to be
48 tabulated according to the processes of the system. Systems using
49 ballots in which votes are recorded upon screens with a stylus or
50 by means of touch are to tally write-in ballots simultaneously with
51 the other ballots;

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

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

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

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

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

80 (e) The returns printed by the automatic tabulating equipment
81 at the central counting center, to which have been added write-in
82 and other valid votes, are, when certified by the clerk of the
83 county commission, to constitute the unofficial preliminary
84 returns of the county. Upon completion of the count, the returns
85 are to be open to the public by posting a summary of the returns
86 as have been tabulated at the central counting center. Upon
87 completion of the canvass, the returns are to be posted as
88 tabulated precinct by precinct.

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

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

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

Perry Wells
Chairman, House Committee

Rory Filmer
Members ~~Chairman, Senate Committee~~

Originating in the House.

In effect ninety days from passage.

Suzanne S. Scaf
Clerk of the House of Delegates

Joseph M. Minard
Clerk of the Senate

[Signature]
Speaker of the House of Delegates

[Signature]
President of the Senate

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SECRETARY OF STATE

The within *is* approved this the *30th*
day of *April*, 2013.

Carl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

APR 29 2013

Time 10:15 am