

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3073

By Delegates Moore, Akers, Phillips, Lucas, Pritt,
Willis, Kyle, Chiarelli, B. Smith, Jeffries, and Maynor

[Introduced ; referred
to the Committee on]

1 A BILL to amend and reenact §3-4A-1 and §3-4A-26 of the Code of West Virginia, 1931, as
2 amended, relating to requiring separate voting equipment to be used for training purposes
3 only; and restricting use of voting equipment that has been tested and sealed prior to any
4 election.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-1. Use of electronic voting systems authorized; separate systems for training purposes.

1 (a) Electronic voting systems may be used for the purpose of registering or recording and
2 computing votes cast in general, special and primary elections: Provided, That the use of the
3 electronic voting systems shall be governed by the terms, conditions, restrictions and limitations
4 imposed by this article.

5 (b) Each county which is authorized to use electronic voting systems in any statewide
6 election shall establish a written policy for securing the electronic voting equipment. The policy
7 shall outline how the equipment is secured from tampering and under what circumstances county
8 personnel are authorized to have access. The clerk of the county commission shall submit a copy
9 of the policy to the Secretary of State by February 1 in each even-numbered year. The clerk shall
10 also submit a copy of any change to the policy within thirty days after its adoption.

11 (c) Each county shall have electronic voting systems designated for training purposes,
12 which shall not be used in an election except in an emergency when:

13 (1) Machine failure during in-person voting results in an insufficient number of machines to
14 lawfully facilitate voting in an election; or

15 (2) Insufficient county funds results in an inability to purchase separate machines to be
16 designated for training purposes; *Provided*, That if a county does not have sufficient funds to
17 purchase training-specific machines, the county shall test and certify free from error each machine
18 used during the trainings in accordance with the requirements set forth in §3-4A-26 of this code

19 prior to the use of such machines in an election.

§3-4A-26. Test of automatic tabulating equipment.

1 (a) ~~No later than~~ one week prior to the start of the count of the votes recorded on ballots or
2 screens in-person voting period as provided in §3-3-3 of this code, the clerk of the county
3 commission shall have the automatic tabulating equipment tested to ascertain that it will
4 accurately count the votes cast for all offices and on all measures. This test shall consist of a test of
5 the entire voting system, including removal of data from a vote-recording device and its transferral
6 to automatic tabulating equipment. The county commission shall give public notice of the time and
7 place of the test not less than 48 hours nor more than two weeks prior to the test by publication of
8 a notice as a Class I-0 legal advertisement in the county involved, in compliance with the
9 provisions of §59-3-1 of this code.

10 (b)(1) Vote-recording devices used and tested for early voting may also be used on
11 election day upon compliance with all of the following requirements:

12 (A) Following the close of early voting, ~~the personal electronic ballot and the programable~~
13 memory chip or election media, definition, and memory devices shall be removed and replaced
14 ~~with another personal electronic ballot and a new~~ programable memory chip or election media,
15 definition, and memory devices prepared for, but unused during, the current election period; and

16 (B) ~~The printed paper trail used during the early voting period shall be removed and~~
17 ~~replaced with a new paper trail; and~~

18 (C) ~~The vote-recording device shall be retested prior to being used on election day, sealed,~~
19 and remain untouched until the appropriate time for the start of voting as provided by law.

20 (2) Any ~~personal electronic ballot~~ programable memory chip or election media, definition,
21 and memory devices ~~and printed paper trail removed from a vote-recording device used for early~~
22 voting shall be securely stored by the county clerk until such time as it is used to tally the votes on
23 election day in accordance with section twenty-seven of this article.

24 (c) (1) A test performed pursuant to this section shall be open to representatives of the

25 political parties, candidates, the press and the public. It is to be conducted by processing a set of
26 preaudited ballots marked to record a predetermined number of valid votes for each candidate or
27 each measure. For each multicandidate office, the test shall include one or more ballots which
28 have cross-over votes in order to test the ability of the automatic tabulating equipment to record
29 those votes in accordance with the provisions of this article and any other applicable law. For each
30 office, the test shall include one or more ballots which have votes in excess of the number allowed
31 by law in order to test the ability of the automatic tabulating equipment to reject votes. If, in the
32 process of any of the test counts, any error is detected, the cause of the error is to be ascertained
33 and corrective action promptly taken. After the completion of the corrective action, the test counts
34 are to continue, including a retesting of those precincts previously test counted. Prior to the
35 continuation of the testing, the county commission shall certify in writing, signed by each
36 commissioner, the nature of the error, its cause and the type of corrective action taken. The
37 certification shall be recorded in the office of the clerk of the county commission in the record book.
38 Immediately after conclusion of this completed test, a certified duplicate copy of the test results
39 shall be sent by certified mail to the offices of the state Election Commission, where it is to be
40 preserved and secured for one year and made available for comparison or analysis by order of a
41 circuit court or the Supreme Court of Appeals.

42 (2) The tabulating equipment to be used in the election shall be immediately certified by the
43 county commission to be free from error as determined by the test. All testing material shall be
44 placed with the certification in a sealed container and kept under individual multiple locks with
45 individual keys for each lock. The number of locks and keys shall be the same as the number of
46 county commissioners together with the county clerk, with each commissioner and the county
47 clerk having a single key in his or her possession. The sealed container shall be opened to
48 conduct the test required immediately before the start of the official count.

49 ~~(3) The test shall be repeated immediately before the start of the official count and at the~~
50 ~~conclusion of the official count before~~ If the count is approved as errorless and before the election

51 returns are approved as official. However, if the count is not errorless, the test shall be conducted
52 again, and the results stored to be reviewed during the canvass. At the post-election audit
53 procedure during canvass, the Board of Canvassers shall review the test results and make any
54 final determination or further examination or testing prior to conducting the audit as provided in §3-
55 4A-28(d) of this code.

56 (4) All results of all of the tests are to be immediately certified by the county commission,
57 filed in the office of the clerk of the county commission and immediately recorded in the record
58 book. On completion of the count, the test materials and test ballots are to be sealed, except for
59 purposes of the canvass as provided in section twenty-eight of this article, and retained and kept
60 under individual multiple locks and individual keys for each lock. The number of locks and keys
61 shall be the same as the number of county commissioners together with the county clerk, with
62 each commissioner and the county clerk having a single key in his or her possession.

63 (d) No voting equipment used during a training session or public demonstration shall be
64 used in an election prior to being fully tested and sealed upon the completion of the testing
65 required by this section. All voting equipment shall be sealed and remain unopened until such time
66 as permitted by law for use in an election and shall not be utilized for any training session.

NOTE: The purpose of this bill is to require counties to utilize separate voting machines from those used for voting in an election, and to require testing of the automatic tabulating equipment prior to its use in an election.