

SB 619 S

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2007**

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COMMITTEE SUBSTITUTE  
FOR

**ENROLLED**  
**Senate Bill No. 619**

(SENATORS KESSLER, EDGELL, MINARD  
AND HUNTER, *original sponsors*)

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[Passed March 7, 2007; in effect ninety days from passage.]

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AN ACT to amend and reenact §3-1-34 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-4A-16 and §3-4A-30 of said code, all relating to election day procedures and preparation; providing for handicapped individuals to vote on election day; providing that clerks must assure voter privacy by placement of voting devices and/or booths; and providing for sufficient space and notice of precinct consolidation.

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

That §3-1-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-4A-16 and §3-4A-30 of said code be amended and reenacted, all to read as follows:

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

**§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.**

1       (a) Any person desiring to vote in an election shall,  
2       upon entering the election room, clearly state his or her  
3       name and residence to one of the poll clerks who shall  
4       thereupon announce the same in a clear and distinct  
5       tone of voice. If that person is found to be duly  
6       registered as a voter at that precinct, he or she shall sign  
7       his or her name in the space marked "signature of  
8       voter" on the pollbook provided for the precinct. If that  
9       person is physically or otherwise unable to sign his or  
10      her name, his or her mark shall be affixed by one of the  
11      poll clerks in the presence of the other, and the name of  
12      the poll clerk affixing the voter's mark shall be  
13      indicated immediately under the affixation. No ballot  
14      may be given to the person until he or she signs his or  
15      her name on the pollbook or his or her signature is  
16      affixed thereon.

17      (b) The clerk of the county commission is authorized,  
18      upon verification that the precinct at which a  
19      handicapped person is registered to vote is not handicap  
20      accessible, to transfer that person's registration to the  
21      nearest polling place in the county which is handicap  
22      accessible. A request by a handicapped person for a  
23      transfer of registration must be received by the county  
24      clerk no later than thirty days prior to the date of the

25 election. Any handicapped person who has not made a  
26 request for a transfer of registration at least thirty days  
27 prior to the date of the election may vote a provisional  
28 ballot at a handicap accessible polling place in the  
29 county of his or her registration. If during the canvass  
30 the county commission determines that the person had  
31 been registered in a precinct that is not handicap  
32 accessible, the voted ballot, if otherwise valid, shall be  
33 counted. The handicapped person may vote in the  
34 precinct to which the registration was transferred only  
35 as long as the disability exists or the precinct from  
36 which the handicapped person was transferred remains  
37 inaccessible to the handicapped. To ensure  
38 confidentiality of the transferred ballot, the county  
39 clerk processing the ballot shall provide the voter with  
40 an unmarked envelope and an outer envelope  
41 designated "provisional ballot/handicapped voter".  
42 After validation of the ballot at the canvass, the outer  
43 envelope shall be destroyed and the handicapped voter's  
44 ballot shall be placed with other approved provisional  
45 ballots prior to removal of the ballot from the unmarked  
46 envelope.

47 (c) When the voter's signature is properly on the  
48 pollbook, the two poll clerks shall sign their names in  
49 the places indicated on the back of the official ballot  
50 and deliver the ballot to the voter to be voted by him or  
51 her without leaving the election room. If he or she  
52 returns the ballot spoiled to the clerks, they shall  
53 immediately mark the ballot "spoiled" and it shall be  
54 preserved and placed in a spoiled ballot envelope  
55 together with other spoiled ballots to be delivered to the  
56 board of canvassers and deliver to the voter another  
57 official ballot, signed by the clerks on the reverse side.  
58 The voter shall thereupon retire alone to the booth or

59 compartment prepared within the election room for  
60 voting purposes and there prepare his or her ballot. In  
61 voting for candidates in general and special elections,  
62 the voter shall comply with the rules and procedures  
63 prescribed in section five, article six of this chapter.

64 (d) It is the duty of a poll clerk, in the presence of the  
65 other poll clerk, to indicate by a check mark inserted in  
66 the appropriate place on the registration record of each  
67 voter the fact that the voter voted in the election. In  
68 primary elections the clerk shall also insert thereon a  
69 distinguishing initial or initials of the political party for  
70 whose candidates the voter voted. If a person is  
71 challenged at the polls, the challenge shall be indicated  
72 by the poll clerks on the registration record, together  
73 with the name of the challenger. The subsequent  
74 removal of the challenge shall be recorded on the  
75 registration record by the clerk of the county  
76 commission.

77 (e) (1) No voter may receive any assistance in voting  
78 unless, by reason of blindness, disability, advanced age  
79 or inability to read and write, that voter is unable to  
80 vote without assistance. Any voter qualified to receive  
81 assistance in voting under the provisions of this section  
82 may:

83 (A) Declare his or her choice of candidates to an  
84 election commissioner of each political party who, in the  
85 presence of the voter and in the presence of each other,  
86 shall prepare the ballot for voting in the manner  
87 hereinbefore provided and, on request, shall read to the  
88 voter the names of the candidates selected on the ballot;

89 (B) Require the election commissioners to indicate to

90 him or her the relative position of the names of the  
91 candidates on the ballot, whereupon the voter shall  
92 retire to one of the booths or compartments to prepare  
93 his or her ballot in the manner hereinbefore provided;

94 (C) Be assisted by any person of the voter's choice,  
95 other than the voter's present or former employer or  
96 agent of that employer, the officer or agent of a labor  
97 union of which the voter is a past or present member or  
98 a candidate on the ballot or an official write-in  
99 candidate; or

100 (D) If he or she is handicapped, vote from an  
101 automobile outside the polling place or precinct by the  
102 absentee balloting method provided in subsection (e),  
103 section five, article three of this chapter in the presence  
104 of an election commissioner of each political party if all  
105 of the following conditions are met:

106 (i) The polling place is not handicap accessible; and

107 (ii) No voters are voting or waiting to vote inside the  
108 polling place.

109 The voted ballot shall then be returned to the precinct  
110 officials and secured in a sealed envelope to be returned  
111 to the clerk of the county commission with all other  
112 election materials. The ballot shall then be tabulated  
113 using the appropriate method provided in section eight  
114 of this chapter as it relates to the specific voting system  
115 in use.

116 (2) Any voter who requests assistance in voting but  
117 who is believed not to be qualified for assistance under  
118 the provisions of this section shall nevertheless be

119 permitted to vote a provisional ballot with the  
120 assistance of any person herein authorized to render  
121 assistance.

122 (3) Any one or more of the election commissioners or  
123 poll clerks in the precinct may challenge the ballot on  
124 the ground that the voter thereof received assistance in  
125 voting it when in his, her or their opinion the person  
126 who received assistance in voting is not so illiterate,  
127 blind, disabled or of such advanced age as to have been  
128 unable to vote without assistance. The election  
129 commissioner or poll clerk or commissioners or poll  
130 clerks making the challenge shall enter the challenge  
131 and reason therefor on the form and in the manner  
132 prescribed or authorized by article three of this chapter.

133 (4) An election commissioner or other person who  
134 assists a voter in voting:

135 (A) May not in any manner request or seek to persuade  
136 or induce the voter to vote any particular ticket or for  
137 any particular candidate or for or against any public  
138 question and must not keep or make any memorandum  
139 or entry of anything occurring within the voting booth  
140 or compartment and must not, directly or indirectly,  
141 reveal to any person the name of any candidate voted  
142 for by the voter or which ticket he or she had voted or  
143 how he or she had voted on any public question or  
144 anything occurring within the voting booth or  
145 compartment or voting machine booth except when  
146 required pursuant to law to give testimony as to the  
147 matter in a judicial proceeding; and

148 (B) Shall sign a written oath or affirmation before  
149 assisting the voter on a form prescribed by the

150 Secretary of State stating that he or she will not  
151 override the actual preference of the voter being  
152 assisted, attempt to influence the voter's choice or  
153 mislead the voter into voting for someone other than the  
154 candidate of voter's choice. The person assisting the  
155 voter shall also swear or affirm that he or she believes  
156 that the voter is voting free of intimidation or  
157 manipulation: *Provided*, That no person providing  
158 assistance to a voter is required to sign an oath or  
159 affirmation where the reason for requesting assistance  
160 is the voter's inability to vote without assistance  
161 because of blindness as defined in section three, article  
162 fifteen, chapter five of this code and the inability to vote  
163 without assistance because of blindness is certified in  
164 writing by a physician of the voter's choice and is on file  
165 in the office of the clerk of the county commission.

166 (5) In accordance with instructions issued by the  
167 Secretary of State, the clerk of the county commission  
168 shall provide a form entitled "list of assisted voters",  
169 the form of which list shall likewise be prescribed by  
170 the Secretary of State. The commissioners shall enter  
171 the name of each voter receiving assistance in voting the  
172 ballot, together with the poll slip number of that voter  
173 and the signature of the person or the commissioner  
174 from each party who assisted the voter. If no voter has  
175 been assisted in voting, the commissioners shall likewise  
176 make and subscribe to an oath of that fact on the list.

177 (f) After preparing the ballot, the voter shall fold the  
178 ballot so that the face is not exposed and so that the  
179 names of the poll clerks thereon are seen. The voter  
180 shall announce his or her name and present his or her  
181 ballot to one of the commissioners who shall hand the  
182 same to another commissioner, of a different political



183 party, who shall deposit it in the ballot box if the ballot  
184 is the official one and properly signed. The  
185 commissioner of election may inspect every ballot  
186 before it is deposited in the ballot box to ascertain  
187 whether it is single, but without unfolding or unrolling  
188 it so as to disclose its content. When the voter has  
189 voted, he or she shall retire immediately from the  
190 election room and beyond the sixty-foot limit thereof  
191 and may not return except by permission of the  
192 commissioners.

193 (g) Following the election, the oaths or affirmations  
194 required by this section from those assisting voters,  
195 together with the "list of assisted voters", shall be  
196 returned by the election commissioners to the clerk of  
197 the county commission along with the election supplies,  
198 records and returns. The clerk of the county  
199 commission shall make the oaths, affirmations and list  
200 available for public inspection and shall preserve them  
201 for a period of twenty-two months or until disposition  
202 is authorized or directed by the Secretary of State or  
203 court of record: *Provided*, That the clerk may use these  
204 records to update the voter registration records in  
205 accordance with subsection (d), section eighteen, article  
206 two of this chapter.

207 (h) Any person making an oath or affirmation  
208 required under the provisions of this section who  
209 knowingly swears falsely or any person who counsels,  
210 advises, aids or abets another in the commission of false  
211 swearing under this section is guilty of a misdemeanor  
212 and, upon conviction thereof, shall be fined not more  
213 than one thousand dollars or confined in the county or  
214 regional jail for a period of not more than one year, or  
215 both fined and confined.

216 (i) Any election commissioner or poll clerk who  
217 authorizes or provides unchallenged assistance to a  
218 voter when the voter is known to the election  
219 commissioner or poll clerk not to require assistance in  
220 voting is guilty of a felony and, upon conviction thereof,  
221 shall be fined not more than five thousand dollars or  
222 imprisoned in a state correctional facility for a period of  
223 not less than one year nor more than five years, or both  
224 fined and imprisoned.

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

**§3-4A-16. Delivery of vote-recording devices; time,  
arrangement for voting.**

1 The clerk of the county commission shall deliver or  
2 cause to be delivered each vote-recording device, where  
3 applicable, and the package of ballots to the polling  
4 place where they are to be employed. The delivery is to  
5 be made not less than one hour prior to the opening of  
6 the polls and is to be made in the presence of the  
7 precinct election commissioners. At the time of the  
8 delivery of the vote recording device, where applicable,  
9 and the ballots, the device is to be sealed to prevent its  
10 use prior to the opening of the polls and any tampering  
11 with the ballot labels; and the ballots are to be  
12 packaged and sealed to prevent any tampering with the  
13 ballots. Immediately prior to the opening of the polls on  
14 election day, the sealed packages of ballots are to be  
15 opened, where applicable, and the seal of the vote-  
16 recording device is to be broken in the presence of the  
17 precinct election commissioners, who shall certify in  
18 writing signed by them to the clerk of the county  
19 commission, that the devices, where applicable, and the  
20 ballots have been delivered in their presence, that the  
21 devices and packages of ballots were found to be sealed

22 upon delivery, and that the seals have been broken and  
23 the devices opened in their presence, as may be  
24 appropriate. The election commissioners shall then  
25 cause the vote-recording device and booth to be  
26 arranged so that the front of the vote-recording device  
27 will not be visible, when the vote-recording device is  
28 being operated, to any person other than the voter. The  
29 poll clerks shall ensure that the vote-recording device is  
30 placed in a location that maintains voter privacy  
31 through the entire period of voting.

**§3-4A-30. Adjustments in voting precincts where electronic  
voting system used.**

1 (a) The provisions of section five, article one of this  
2 chapter, relating to the number of registered voters in  
3 each precinct, shall apply to and control in precincts in  
4 counties in which electronic voting systems have been  
5 adopted, except that the maximum number of registered  
6 voters shall be one thousand five hundred per precinct.  
7 The county commissions of such counties, subject to  
8 other provisions of this chapter with respect to the  
9 altering or changing of the boundaries of voting  
10 precincts, may change the boundaries of precincts or  
11 consolidate precincts as practicable, to achieve the  
12 maximum advantage from the use of electronic voting  
13 systems.

14 (b) The county commission may, in the urban centers  
15 of any county adopting an electronic voting system,  
16 designate a voting place outside the boundaries of a  
17 precinct, provided such voting place is in a public  
18 building of sufficient size and in an adjoining precinct.  
19 In such event, more than one precinct may vote in any  
20 such public building. Upon combination of adjoining

21 precincts pursuant to this subsection, the county  
22 commission shall: (1) Publish its order combining the  
23 precincts in the same manner as an order of  
24 consolidation pursuant to section seven, article one of  
25 this chapter; and (2) cause its order to be published with  
26 each sample ballot publication required by this chapter.

Enr. Com. Sub. for S. B. No. 619] 12

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

  
.....  
Chairman Senate Committee


  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

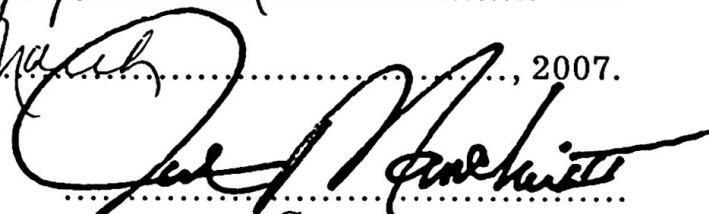
  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved ..... this  
the 20<sup>th</sup> Day of March ....., 2007.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 20 2007

Time 4:08