

HB 406

FILED

2009 DEC -3 PM 3: 29

OFFICE OF THE CLERK  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FOURTH EXTRAORDINARY SESSION, 2009



**ENROLLED**

**House Bill No. 406**

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)



Passed November 19, 2009

In Effect from Passage

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

**FILED**

2009 DEC -3 PM 3: 49

**H. B. 406**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)  
[BY REQUEST OF THE EXECUTIVE]

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[Passed November 19, 2009; in effect from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §3-3B-1, §3-3B-2, §3-3B-3 and §3-3B-4, all relating to voting by members of the military and citizens residing outside the United States; creating a pilot program for military and overseas voters for the primary and general elections to be held during the year 2010; allowing counties that meet minimum requirements to participate in the pilot program; establishing participation requirements; providing for program selection by the Secretary of State; providing for the evaluation of pilot programs; requiring the submission of reports to Legislature; and establishing minimum voting system requirements.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §3-3B-1, §3-3B-2, §3-3B-3 and §3-3B-4, all to read as follows:

**ARTICLE 3B. UNIFORMED SERVICES AND OVERSEAS  
VOTER PILOT PROGRAM.**

**§3-3B-1. Short title.**

1           This article shall be known as the “Uniformed Services  
2    and Overseas Voter Pilot Program.”

**§3-3B-2. Uniformed services members and overseas voter pilot program.**

1           This article authorizes a pilot program that will allow  
2    counties that meet the minimum requirements contained in  
3    section four to use available voting technology for the  
4    purposes of voting by absent uniformed services members  
5    and overseas citizens, as defined by 42 U.S.C. §1973ff, et  
6    seq. Participation in the pilot program will assist counties and  
7    the state in identifying areas for potential modification as  
8    larger pilot programs of this type begin to be authorized by  
9    the federal government under the Military and Overseas  
10   Voter Empowerment Act Pub. L. No. 111-84 (2009). Pilot  
11   programs authorized by this article are only applicable to the  
12   primary and general elections to be held during the year  
13   2010.

**§3-3B-3. Process for selection by Secretary of State.**

1           (a) On or before the close of business on January 8,  
2    2010, any county interested in participating in the pilot  
3    program must submit a proposal to the Secretary of State.  
4    The proposal shall include:

5           (1) The name of the vendor or vendors, if any, whose  
6    voting system will be implemented for voting by uniformed  
7    military and overseas citizen voters;

8           (2) The anticipated cost to the county of implementing  
9    the proposal;

10 (3) The manner in which the voting system complies  
11 with the provisions of section four of this article; and

12 (4) An option for the voter to choose not to vote using  
13 the pilot voting system, but rather by mail, fax or e-mail at  
14 the voter's discretion as provided for in sections five and  
15 five-b, article three, chapter three of this code.

16 (b) The Secretary of State shall evaluate each proposal  
17 and shall approve those proposals which meet the criteria  
18 described in section four of this article.

19 (c) On or before January 29, 2010, each county that has  
20 submitted a proposal shall be notified by the Secretary of  
21 State that the application has either been approved or denied.

22 (d) Following the primary election, the Secretary shall  
23 evaluate the functional effectiveness of pilot programs  
24 conducted under this article and shall terminate any program  
25 that fails to adequately and securely ensure that absent  
26 uniformed services voters and overseas voters have their  
27 absentee ballots cast and counted in the primary election.

28 (e) Ninety days following the 2010 primary election and  
29 ninety days following the 2010 general election, the  
30 Secretary shall submit to the Legislature reports on the  
31 progress and outcomes of any pilot program conducted under  
32 this article, together with recommendations:

33 (1) for the conduct of additional pilot programs; and

34 (2) for such other legislation as the Secretary determines  
35 appropriate.

**§3-3B-4. Minimum requirements for pilot program voting systems.**

1 Provisions of sections eight and nine, article four-a,  
2 chapter three of this code notwithstanding, a voting system  
3 may be approved by the Secretary of State for use in the pilot  
4 program authorized by this article if it meets the following  
5 minimum requirements:

6 (1) Basic Operational Elements of the Online Voting  
7 System.

8 (A) System is web-based.

9 (B) System has an intuitive, easy-to-navigate interface.

10 (C) System is localized (in terms of date, time and  
11 address formats) to major areas in the world.

12 (D) System can handle five thousand voters over ten days,  
13 with likely spikes in use at beginning and end of voting period.

14 (2) Accessibility.

15 (A) System interoperates with a wide variety of  
16 client-side platforms, including:

17 (i) Microsoft Windows;

18 (ii) MacOS;

19 (iii) Other common operating systems (Linux, etc.);

20 (iv) Internet Explorer version 3 or higher;

21 (v) Firefox version 3 or higher;

22 (vi) Safari version 1 or higher;

23 (vii) Opera version 3 or higher;

24 (viii) Netscape version 3 or higher; and

25 (ix) Chrome version 1 or higher.

26 (B) System does not require use of Java/Javascrpts (or  
27 detects whether browser accepts Java/JavaScript and provides  
28 alternate interfaces.

29 (C) System detects whether browser accepts images and  
30 provides alternate interfaces.

31 (D) System works for users who use screen readers.

32 (E) System works for users who access the Internet  
33 using a text-only browser.

34 (F) System is sensitive to low-bandwidth/slow-modem  
35 environment of some users.

36 (3) Verification of Voters.

37 (A) System verifies a voter's member number, password  
38 and PIN number.

39 (B) System alerts administrator of suspected efforts at  
40 fraud (including repeated guesses of passwords, excessive  
41 votes from a single PC).

42 (4) Secret But Verifiable Ballots. System implements  
43 secret balloting, while allowing independent third-party  
44 monitors to verify that the ballots counted are the same as the  
45 ballots cast.

46 (5) Support for Ballot Marking Rules. System either:

47 (A) does not allow mismarking of ballots; or

48 (B) checks validity of ballots immediately upon  
49 submission, and returns ballot to voter for resubmission if  
50 there is an error.

51           (6) Data Security.

52           (A) System protects the security, integrity, and  
53 confidentiality of members' personal data.

54           (B) System protects the security, integrity, and  
55 confidentiality of ballots.

56           (C) Ideally, system provides no way for anyone (even  
57 vendor employees) to determine how an individual voter  
58 voted; at a minimum, system provides reasonable safeguards  
59 to prevent such data access.

60           (7) Verifiability of Software and Procedures.

61           (A) System and vendor make it possible to verify that  
62 the software performs according to specification.

63           (B) System and vendor make it possible to verify that  
64 the vendor is running the software correctly.

65           (C) Vendor will allow independent third-party monitors  
66 to review:

67           (i) software, before and during election; and

68           (ii) procedures (how many people have access to what  
69 parts of the system, how passwords are issued, how backups  
70 are done).

71           (D) System incorporates safeguards to assure that  
72 vendor employees do not cast votes for users who do not  
73 vote.

74           (E) System provides mechanism for verifying that the  
75 system is operating the way it is supposed to; this may  
76 involve mathematical procedures or cryptographic protocols

77 that will reveal if ballots have been tampered with, audit  
78 trails, or other mechanisms suggested by the vendor.

79 (F) System automatically verifies the number of ballots  
80 sent in and the size and consistency of the database(s), and  
81 warns the administrator and stops the voting until the  
82 administrator manually authorizes it to continue.

83 (8) Vendor Transparency and Openness.

84 (A) Vendor will be sufficiently transparent and open  
85 about the system's design and function so as to foster  
86 confidence among users.

87 (B) Vendor will allow independent third-party monitors  
88 to verify that the voting system is working according to the  
89 specification and proposal.

90 (9) Vendor Capability

91 (A) Vendor is committed to the success of the voting  
92 system.

93 (B) Vendor provides access to 24-hour technical support  
94 during the 10-day voting period.

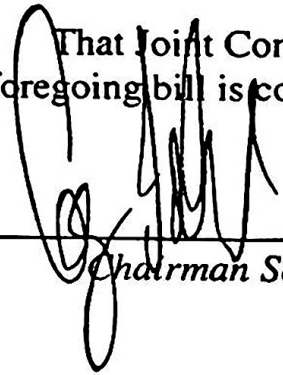
95 (C) Vendor has tested its voting systems in a production  
96 environment.

97 (D) Vendor will test the voting system prior to the  
98 election.

99 (E) Vendor has, and provides reference for, prior  
100 experience with similar systems.



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

  
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Chairman Senate Committee

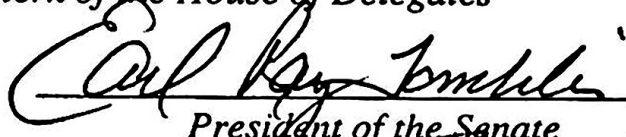
  
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Chairman House Committee

Originating in the House.

In effect from passage.

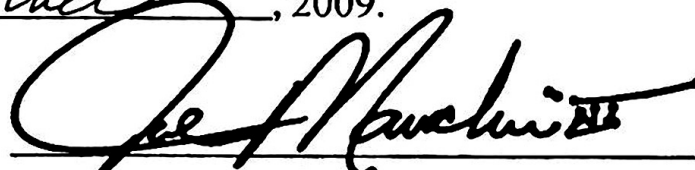
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker of the House of Delegates

The within is approved this the 31<sup>st</sup>  
day of December, 2009.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

NOV 25 2009

Time 10:30

*DW*