

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 3135**

4  
5 (By Delegates Marcum, R. Phillips, Sponaugle,  
6 Manypenny, Longstreth and Skinner)

7 (Originating in the Committee on the Judiciary)

8 [March 28, 2013]

9  
10 A BILL 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; updating language related to approval of electronic  
15 voting systems; correcting internal references; updating and  
16 clarifying language related to proceedings at the central  
17 counting center.

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

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

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

23 **§3-4A-2. Definitions.**

24 As used in this article, unless otherwise specified:

25 (1) "Automatic tabulating equipment" means all apparatus

1 necessary to electronically count votes recorded on ballots, ~~and~~  
2 tabulate the results and produce necessary reports;

3 (2) "Ballot" means ~~an electronic image or paper on which votes~~  
4 ~~may be recorded by means of perforating or marking with~~  
5 ~~electronically sensible ink or pencil or a screen upon which votes~~  
6 ~~may be recorded by means of a stylus or by means of touch~~ a logical  
7 or physical device that presents races, candidates, and contests  
8 and facilitates the capture of the voter's choices or intent;

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

13 (4) "Electronic poll book" means an electronic device  
14 containing ~~the same~~ voter registration information ~~maintained by~~  
15 ~~the county clerk in a printed poll book~~ for the purpose of  
16 facilitating voting at the precinct;

17 (5) "Electronic voting system" is ~~a means of conducting an~~  
18 ~~election whereby votes are recorded on ballots by means of an~~  
19 ~~electronically sensible marking ink, by perforating or are recorded~~  
20 ~~on equipment that registers votes on a computer disk, or by~~  
21 ~~touching a screen with a stylus or by means of touch, and votes are~~  
22 ~~subsequently counted by automatic tabulating equipment at the~~  
23 ~~central counting center~~ one or more integrated devices that utilize  
24 an electronic component for the following functions: Ballot

1 presentation, vote capture, vote recording and tabulation;

2 (6) "Standard validation test deck" means a group of ballots  
3 wherein all voting possibilities which can occur in an election are  
4 represented; and

5 (7) "Vote-recording device" means equipment ~~in which ballots~~  
6 ~~are placed to allow a voter to record his or her vote by~~  
7 ~~electronically sensible ink, or pencil, or a screen upon which~~  
8 ~~votes may be recorded by means of a stylus or by means of touch~~  
9 that captures and records voter intent by marking a screen to  
10 record selections or by using electronically sensible ink to mark  
11 selections; and

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

16 **§3-4A-8. Approval of electronic voting system by State Election**  
17 **Commission; expenses; compensation of persons**  
18 **examining system.**

19 (a) Any person or corporation owning or interested in any  
20 electronic voting system may apply to the State Election Commission  
21 so that the system may be examined and a report be made on its  
22 accuracy, efficiency, capacity and safety. Upon the written  
23 application of any vendor tendered to the Secretary of State or to  
24 any clerks in his or her office in charge of receiving filings for

1 any purpose, the Secretary of State shall fix a date, time and  
2 place, not more than thirty days after the receipt of the  
3 application, for a meeting of the State Election Commission for  
4 mutual consideration of the application. The Secretary of State  
5 shall mail notice of the hearing by certified mail to each member  
6 of the commission.

7 (b) The State Election Commission shall appoint two qualified  
8 computer experts who are not members of the same political party to  
9 examine the system and make full reports on the system to the  
10 commission within ~~thirty~~ ninety days from the date the State  
11 Election Commission approves the consideration of the application.  
12 They shall state in the report whether the examined system complies  
13 with the requirements of this article and the federal agency  
14 responsible for certifying voting systems and can be safely used by  
15 voters at elections under the conditions prescribed in this  
16 article. If the report is in the affirmative on that question, the  
17 commission may approve the system and adopt a system of its make  
18 and design for use at elections as provided in this article:  
19 *Provided*, That under no circumstances may a system be approved that  
20 is not capable of accurately tabulating returns based upon all  
21 possible combinations of voting patterns ~~including, but not limited~~  
22 ~~to, crossover voting and in accordance with section five, article~~  
23 ~~six of this chapter~~. The vendor of the approved system shall  
24 provide the State Election Commission with a report, due on January

1 1, of each even-numbered year, that outlines any problem that has  
2 been experienced with the equipment by any jurisdiction in the  
3 state or in any jurisdiction outside the state that uses the same  
4 or a similar version of the equipment that has been certified for  
5 use in this state.

6 (c) No electronic voting system may be used at any election  
7 unless it has been approved under this section or its former  
8 provisions and by the appropriate agency of the federal government  
9 whose purpose is to review and issue a certificate of approval.  
10 Each of the two qualified computer experts appointed by the  
11 commission are entitled to reasonable compensation and expenses in  
12 making the examination and report, to be paid in advance of the  
13 examination required by subsection (b) of this section by the  
14 person or corporation applying for the examination. This sum shall  
15 be the sole compensation to be received by any expert for any work  
16 performed pursuant to this section. The State Election Commission  
17 shall determine the compensation at the time of approving the  
18 application for certification.

19 **§3-4A-23. Persons prohibited about voting booths; penalties.**

20 Excepting election officials acting under authority of  
21 sections nineteen, twenty ~~twenty-one~~ and twenty-two of this article  
22 in the conduct of the election, and qualified persons assisting  
23 voters pursuant to section twenty-two of this article, no person  
24 other than the voter may be in, about or within five feet of the

1 voting booth during the time the voter is voting at any election.  
2 While the voter is voting, no person may communicate with the voter  
3 in any manner and the voter may not communicate with any other  
4 person or persons. No person may enter a voting booth with any  
5 recording or electronic device in order to record or interfere with  
6 the voting process. Any conduct or action of an election official  
7 about or around the voting booth while the voter is in the process  
8 of voting, except as expressly provided in this article, is a  
9 violation of this section. Any person violating the provisions of  
10 this section is guilty of a misdemeanor and, upon conviction  
11 thereof, shall be fined not more than \$1,000 or ~~be sentenced to~~  
12 ~~imprisonment~~ confined in the county jail for a period not more than  
13 twelve months, or ~~in the discretion of the court, shall be subject~~  
14 ~~to both such fine and imprisonment~~ both fined and confined.

15 **§3-4A-27. Proceedings at the central counting center.**

16 (a) All proceedings at the central counting center are to be  
17 under the supervision of the clerk of the county commission and are  
18 to be conducted under circumstances which allow observation from a  
19 designated area by all persons entitled to be present. The  
20 proceedings shall take place in a room of sufficient size and  
21 satisfactory arrangement to permit observation. Those persons  
22 entitled to be present include all candidates whose names appear on  
23 the ballots being counted or if a candidate is absent, a  
24 representative of the candidate who presents a written

1 authorization signed by the candidate for the purpose and two  
2 representatives of each political party on the ballot who are  
3 chosen by the county executive committee chairperson. A reasonable  
4 number of the general public is also freely admitted to the room.  
5 In the event all members of the general public desiring admission  
6 to the room cannot be admitted at one time, the county commission  
7 shall provide for a periodic and convenient rotation of admission  
8 to the room for observation, to the end that each member of the  
9 general public desiring admission, during the proceedings at the  
10 central counting center, is to be granted admission for reasonable  
11 periods of time for observation: *Provided*, That no person except  
12 those authorized for the purpose may touch any ballot ~~or ballot~~  
13 ~~card~~ or other official records and papers utilized in the election  
14 during observation.

15 (b) All persons who are engaged in processing and counting the  
16 ballots are to work in teams consisting of two persons of opposite  
17 political parties, and are to be deputized in writing and take an  
18 oath that they will faithfully perform their assigned duties.  
19 These deputies are to be issued an official badge or identification  
20 card which is assigned an identity control number and the deputies  
21 are to prominently wear on his or her outer garments the issued  
22 badge or identification card. Upon completion of the deputies'  
23 duties, the badges or identification cards are to be returned to  
24 the county clerk.

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

4 (1) In systems using ballots marked with electronically  
5 sensible ink, ballots are to be removed from the ballot boxes and  
6 stacked for the tabulator which separates ballots containing marks  
7 for a write-in position. Immediately after tabulation, the valid  
8 write-in votes are to be tallied. No write-in vote may be counted  
9 for an office unless the voter has entered the name of an official  
10 write-in candidate for that office on the line provided; either by  
11 writing, affixing a sticker or placing an ink-stamped impression  
12 thereon;

13 (2) In systems using ballots in which votes are recorded upon  
14 screens with a stylus or by means of touch, the ~~personalized~~  
15 ~~electronic~~ ballots are to be ~~removed from the containers and~~  
16 ~~stacked for the tabulator~~ tabulated according to the processes of  
17 the system. Systems using ballots in which votes are recorded upon  
18 screens with a stylus or by means of touch are to tally write-in  
19 ballots simultaneously with the other ballots;

20 (3) When more than one person is to be elected to an office  
21 and the voter desires to cast write-in votes for more than one  
22 official write-in candidate for that office, ~~a single punch or~~  
23 ~~mark, as~~ the voter shall mark the location appropriate for the  
24 voting system, in the write-in location for that office. ~~is~~

1 ~~sufficient for all write-in choices.~~ When there are multiple  
2 write-in votes for the same office and the combination of choices  
3 for candidates on the ballot and write-in choices for the same  
4 office exceed the number of candidates to be elected, the ballot is  
5 to be duplicated or hand counted, with all votes for that office  
6 rejected;

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

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

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

18 (d) If any ballot ~~card~~ is damaged or defective so that it  
19 cannot properly be counted by the automatic tabulating equipment,  
20 a true duplicate copy is to be made of the damaged ballot ~~card~~ in  
21 the presence of representatives of each political party on the  
22 ballot and substituted for the damaged ballot ~~card~~. All duplicate  
23 ~~ballot cards~~ ballots are to be clearly labeled "duplicate" and are  
24 to bear a serial number which is recorded on the damaged or

1 defective ballot ~~card~~ and on the replacement ballot. ~~card.~~

2 (e) The returns printed by the automatic tabulating equipment  
3 at the central counting center, to which have been added write-in  
4 and other valid votes, are, when certified by the clerk of the  
5 county commission, to constitute the ~~official~~ unofficial  
6 preliminary returns of ~~each precinct or election district~~ the  
7 county. ~~Further, all the returns are to be printed on a precinct~~  
8 ~~basis. Periodically throughout and upon~~ Upon completion of the  
9 count, the returns are to be open to the public by posting a  
10 summary of the returns as have been tabulated precinct by precinct  
11 at the central counting center. Upon completion of the canvass,  
12 the returns are to be posted ~~in the same manner~~ as tabulated  
13 precinct by precinct.

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

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