

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 145**

4 (By Senator Unger)

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6 [Originating in the Committee on the Judiciary;

7 reported February 20, 2013.]

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11 A BILL to amend and reenact §3-1-50 of the Code of West Virginia,  
12 1931, as amended, relating to the administrative procedure in  
13 response to election-related complaints; clarifying language  
14 to allow the procedure to be utilized for certain federal  
15 election violations; and providing an exception to the  
16 procedure for certain allegations that may result in a finding  
17 of a criminal violation.

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

19 That §3-1-50 of the Code of West Virginia, 1931, as amended,  
20 be amended and reenacted to read as follows:

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

22 **§3-1-50. Establishment of state-based administrative complaint**  
23 **procedures.**

24 (a) The Secretary of State shall establish and maintain a

1 state-based administrative complaint procedure for complaints  
2 received concerning election violations which shall meet the  
3 following requirements:

4 (1) The procedures shall be uniform and nondiscriminatory.

5 (2) Under the procedures, any person who believes that there  
6 is a violation of any provision of this chapter or Title III of the  
7 Help America Vote Act, Pub. L. 107-252, including a violation which  
8 has occurred, is occurring or is about to occur, may file a  
9 complaint.

10 (3) Any complaint filed under the procedures shall be in  
11 writing, notarized and signed and sworn by the person filing the  
12 complaint.

13 (4) The Secretary of State may consolidate complaints filed  
14 under this section.

15 (5) At the request of the complainant there shall be a hearing  
16 on the record.

17 (6) Violations of any provision of this chapter shall be  
18 punishable in accordance with the provisions of article nine of  
19 this chapter.

20 (7) If, under the procedures, the Secretary of State  
21 determines that there is no violation, the Secretary of State shall  
22 dismiss the complaint and publish the results of the procedures.

23 (8) The Secretary of State shall make a final determination  
24 with respect to a complaint prior to the expiration of the

1 ninety-day period which begins on the date the complaint is filed  
2 unless the complainant consents to a longer period for making a  
3 determination.

4 (9) If the Secretary of State fails to meet the deadline  
5 applicable under subdivision (8) of this section, the complaint  
6 shall be resolved within sixty days under alternative dispute  
7 resolution procedures established for purposes of this section. The  
8 record and other materials from any proceedings conducted under the  
9 complaint procedures established under this section shall be made  
10 available for use under the alternative dispute resolution  
11 procedures.

12 (b) The administrative complaint procedure required by  
13 subsection (a) of this section is not applicable if, within thirty  
14 days of the filing of the complaint: (1) The Secretary of State  
15 initiates an investigation; (2) the Secretary of State determines  
16 that the allegations contained in the complaint may result in a  
17 finding of a criminal violation; and (3) the Secretary of State  
18 determines that the administrative complaint procedure required by  
19 this section would endanger or impede the associated criminal  
20 investigation: Provided, That within three business days thereafter  
21 the Secretary of State shall notify the complainant in writing that  
22 the allegations contained in the complaint may result in a finding  
23 of a criminal violation and, therefore, the administrative  
24 procedure contained in this section is inapplicable.