

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

COMMITTEE SUBSTITUTE

for

## **H. B. 3135**

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(BY DELEGATE(S) MARCUM, R. PHILLIPS, SPONAUGLE,  
MANYPENNY, LONGSTRETH AND SKINNER)

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[Passed April 12, 2013; in effect ninety days from passage.]

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AN ACT to amend and reenact §3-4A-2, §3-4A-8, §3-4A-23 and §3-4A-27 of the Code of West Virginia, 1931, as amended, all relating generally to electronic voting systems; updating and clarifying the definitions related to electronic voting systems; defining terms; adjusting requirements related to approval of electronic voting systems; increasing the time within which the State Election Commission must appoint certain computer experts; correcting internal code references; updating and clarifying language related to proceedings at the central counting center; and making other technical clarifications.

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

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

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

**§3-4A-2. Definitions.**

1 As used in this article, unless otherwise specified:

2 (1) “Automatic tabulating equipment” means all apparatus  
3 necessary to electronically count votes recorded on ballots,  
4 tabulate the results and produce necessary reports;

5 (2) “Ballot” means a logical or physical device that presents  
6 races, candidates and contests, and facilitates the capture of the  
7 voter’s choices or intent;

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

12 (4) “Electronic poll book” means an electronic device  
13 containing voter registration information for the purpose of  
14 facilitating voting at the precinct;

15 (5) “Electronic voting system” is one or more integrated  
16 devices that utilize an electronic component for the following  
17 functions: Ballot presentation, vote capture, vote recording and  
18 tabulation;

19 (6) “Standard validation test deck” means a group of ballots  
20 wherein all voting possibilities which can occur in an election are  
21 represented;

22 (7) “Vote-recording device” means equipment that captures  
23 and records voter intent by marking a screen to record selections  
24 or by using electronically sensible ink to mark selections; and

25 (8) “Voter verified paper audit trail” means a physical  
26 printout on which the voter’s ballot choices, as registered by a  
27 direct recording device, are recorded. This shall be visible to the  
28 voter and shall be securely locked to avoid tampering.

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

1 (a) Any person or corporation owning or interested in any  
2 electronic voting system may apply to the State Election  
3 Commission so that the system may be examined and a report be  
4 made on its accuracy, efficiency, capacity and safety. Upon the  
5 written application of any vendor tendered to the Secretary of  
6 State or to any clerks in his or her office in charge of receiving  
7 filings for any purpose, the Secretary of State shall fix a date, time  
8 and place, not more than thirty days after the receipt of the  
9 application, for a meeting of the State Election Commission for  
10 mutual consideration of the application. The Secretary of State  
11 shall mail notice of the hearing by certified mail to each member  
12 of the commission.

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

28 vendor of the approved system shall provide the State Election  
29 Commission with a report, due on January 1, of each  
30 even-numbered year, that outlines any problem that has been  
31 experienced with the equipment by any jurisdiction in the state or  
32 in any jurisdiction outside the state that uses the same or a similar  
33 version of the equipment that has been certified for use in this  
34 state.

35 (c) No electronic voting system may be used at any election  
36 unless it has been approved under this section or its former  
37 provisions and by the appropriate agency of the federal  
38 government whose purpose is to review and issue a certificate of  
39 approval. Each of the two qualified computer experts appointed  
40 by the commission are entitled to reasonable compensation and  
41 expenses in making the examination and report, to be paid in  
42 advance of the examination required by subsection (b) of this  
43 section by the person or corporation applying for the examination.  
44 This sum shall be the sole compensation to be received by any  
45 expert for any work performed pursuant to this section. The State  
46 Election Commission shall determine the compensation at the  
47 time of approving the application for certification.

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

1 Excepting election officials acting under authority of sections  
2 nineteen, twenty and twenty-two of this article in the conduct of  
3 the election, and qualified persons assisting voters pursuant to  
4 section twenty-two of this article, no person other than the voter  
5 may be in, about or within five feet of the voting booth during the  
6 time the voter is voting at any election. While the voter is voting,  
7 no person may communicate with the voter in any manner and the  
8 voter may not communicate with any other person or persons. No  
9 person may enter a voting booth with any recording or electronic  
10 device in order to record or interfere with the voting process. Any  
11 conduct or action of an election official about or around the  
12 voting booth while the voter is in the process of voting, except as  
13 expressly provided in this article, is a violation of this section.

14 Any person violating the provisions of this section is guilty of a  
15 misdemeanor and, upon conviction thereof, shall be fined not  
16 more than \$1,000 or confined in jail not more than twelve months,  
17 or both fined and confined.

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

1 (a) All proceedings at the central counting center are to be  
2 under the supervision of the clerk of the county commission and  
3 are to be conducted under circumstances which allow observation  
4 from a designated area by all persons entitled to be present. The  
5 proceedings shall take place in a room of sufficient size and  
6 satisfactory arrangement to permit observation. Those persons  
7 entitled to be present include all candidates whose names appear  
8 on the ballots being counted or if a candidate is absent, a  
9 representative of the candidate who presents a written  
10 authorization signed by the candidate for the purpose and two  
11 representatives of each political party on the ballot who are  
12 chosen by the county executive committee chairperson. A  
13 reasonable number of the general public is also freely admitted to  
14 the room. In the event all members of the general public desiring  
15 admission to the room cannot be admitted at one time, the county  
16 commission shall provide for a periodic and convenient rotation  
17 of admission to the room for observation, to the end that each  
18 member of the general public desiring admission, during the  
19 proceedings at the central counting center, is to be granted  
20 admission for reasonable periods of time for observation:  
21 *Provided*, That no person except those authorized for the purpose  
22 may touch any ballot or other official records and papers utilized  
23 in the election during observation.

24 (b) All persons who are engaged in processing and counting  
25 the ballots are to work in teams consisting of two persons of  
26 opposite political parties, and are to be deputized in writing and  
27 take an oath that they will faithfully perform their assigned duties.  
28 These deputies are to be issued an official badge or identification  
29 card which is assigned an identity control number and the

30 deputies are to prominently wear on his or her outer garments the  
31 issued badge or identification card. Upon completion of the  
32 deputies' duties, the badges or identification cards are to be  
33 returned to the county clerk.

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

37 (1) In systems using ballots marked with electronically  
38 sensible ink, ballots are to be removed from the ballot boxes and  
39 stacked for the tabulator which separates ballots containing marks  
40 for a write-in position. Immediately after tabulation, the valid  
41 write-in votes are to be tallied. No write-in vote may be counted  
42 for an office unless the voter has entered the name of an official  
43 write-in candidate for that office on the line provided; either by  
44 writing, affixing a sticker or placing an ink-stamped impression  
45 thereon;

46 (2) In systems using ballots in which votes are recorded upon  
47 screens with a stylus or by means of touch, the ballots are to be  
48 tabulated according to the processes of the system. Systems using  
49 ballots in which votes are recorded upon screens with a stylus or  
50 by means of touch are to tally write-in ballots simultaneously with  
51 the other ballots;

52 (3) When more than one person is to be elected to an office  
53 and the voter desires to cast write-in votes for more than one  
54 official write-in candidate for that office, the voter shall mark the  
55 location appropriate for the voting system, in the write-in location  
56 for that office. When there are multiple write-in votes for the  
57 same office and the combination of choices for candidates on the  
58 ballot and write-in choices for the same office exceed the number  
59 of candidates to be elected, the ballot is to be duplicated or hand  
60 counted, with all votes for that office rejected;

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

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

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

72 (d) If any ballot is damaged or defective so that it cannot  
73 properly be counted by the automatic tabulating equipment, a true  
74 duplicate copy is to be made of the damaged ballot in the  
75 presence of representatives of each political party on the ballot  
76 and substituted for the damaged ballot. All duplicate ballots are  
77 to be clearly labeled "duplicate" and are to bear a serial number  
78 which is recorded on the damaged or defective ballot and on the  
79 replacement ballot.

80 (e) The returns printed by the automatic tabulating equipment  
81 at the central counting center, to which have been added write-in  
82 and other valid votes, are, when certified by the clerk of the  
83 county commission, to constitute the unofficial preliminary  
84 returns of the county. Upon completion of the count, the returns  
85 are to be open to the public by posting a summary of the returns  
86 as have been tabulated at the central counting center. Upon  
87 completion of the canvass, the returns are to be posted as  
88 tabulated precinct by precinct.

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

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



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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2013.

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*Governor*





