

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Introduced**

## **Senate Bill 638**

BY SENATORS MAYNARD, SMITH, AND KARNES

[Introduced March 12, 2021; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-4A-9 of the Code of West Virginia, 1931, as amended, relating  
 2 to electronic voting; and allowing “one button” straight party ticket voting.

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

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

**§3-4A-9. Minimum requirements of electronic voting systems.**

1 An electronic voting system of particular make and design may not be approved by the  
 2 State Election Commission or be purchased, leased or used by any county commission unless it  
 3 meets the following requirements:

4 (1) It secures or ensures the voter absolute secrecy in the act of voting or, at the voter’s  
 5 election, provides for open voting;

6 (2) It is constructed to ensure that, except in instances of open voting as provided in this  
 7 section, the contents of a marked ballot may not be seen or known by anyone other than the voter  
 8 who has voted or is voting;

9 (3) It permits each voter to vote at any election for all persons and offices for whom and  
 10 which he or she is lawfully entitled to vote, whether or not the name of any person appears on a  
 11 ballot as a candidate; and it permits each voter to vote for as many persons for an office as he or  
 12 she is lawfully entitled to vote for; and to vote for or against any question upon which he or she is  
 13 lawfully entitled to vote. The automatic tabulating equipment used in electronic voting systems is  
 14 to reject choices recorded on any ballot if the number of choices exceeds the number to which a  
 15 voter is entitled;

16 (4) It permits each voter to write in the names of persons for whom he or she desires to  
 17 vote whose names do not appear upon the ballots;

18 (5) It permits the voter to “one button” vote for all candidates of either major political party  
 19 where applicable, otherwise known as straight party ticket voting.

20 ~~(5)~~ (6) It permits each voter to change his or her vote for any candidate and upon any  
 21 question appearing upon the ballots or ballot labels up to the time when his or her ballot is

22 deposited in the ballot box or his or her ballot is cast by electronic means;

23 ~~(6)~~ (7) It permits the voter to “one button” vote for all candidates of either major political  
24 party where applicable. It contains programming media containing sequentially numbered  
25 program instructions and coded or otherwise protected from tampering or substitution of the  
26 media or program instructions by unauthorized persons and capable of tabulating all votes cast  
27 in each election;

28 ~~(7)~~ (8) It contains two standard validation test decks approved as to form and testing  
29 capabilities by the State Election Commission;

30 ~~(8)~~ (9) It correctly records and counts accurately all votes cast for each candidate and for  
31 and against each question appearing upon the ballots;

32 ~~(9)~~ (10) It permits a voter in a primary election to: (A) Vote only for the candidates of the  
33 party for which the voter is legally permitted to vote; (B) vote for the candidates, if any, for  
34 nonpartisan nominations or election; and (C) vote on public questions; and precludes the voter  
35 from voting for any candidate seeking nomination by any other political party unless that political  
36 party has determined that the voter may participate in its primary election;

37 ~~(10)~~ (11) It, where applicable, is provided with means for sealing or electronically securing  
38 the vote-recording device to prevent its use and to prevent tampering with the device, both before  
39 the polls are open or before the operation of the vote-recording device for an election is begun  
40 and immediately after the polls are closed or after the operation of the vote-recording device for  
41 an election is completed;

42 ~~(11)~~ (12) It has the capacity to contain the names of candidates constituting the tickets of  
43 at least nine political parties and accommodates the wording of at least 15 questions;

44 ~~(12)~~ (13)(A) Direct-recording electronic voting machines must generate a paper copy of  
45 each voter’s vote that will be automatically kept within a storage container that is locked, closely  
46 attached to the direct-recording electronic voting machine and inaccessible to all but authorized  
47 voting officials, who will handle such storage containers and such paper copies contained therein

48 in accordance with section nineteen of this article;

49 (B) The paper copy of the voter's vote shall be generated at the time the voter is at the  
50 voting station using the direct-recording electronic voting machine;

51 (C) The voter may examine the paper copy visually or through headphone readout, and  
52 may accept or reject the printed copy;

53 (D) The voter may not touch, handle or manipulate the printed copy manually in any way;

54 (E) Once the printed copy of the voter's votes is accepted by the voter as correctly  
55 reflecting the voter's intent, but not before, it will automatically be stored for recounts or random  
56 checks and the electronic vote will be cast within the computer mechanism of the direct-recording  
57 electronic voting machine;

58 (F) Direct-recording electronic voting machines with a mandatory paper copy shall be  
59 approved by the Secretary of State. The Secretary of State may promulgate rules and emergency  
60 rules to implement or enforce this subsection pursuant to the provisions of §29A-3-5 of this code;

61 ~~(13)~~ (14) Where vote-recording devices are used, they shall:

62 (A) Be durably constructed of material of good quality and in a workmanlike manner and  
63 in a form which makes it safely transportable;

64 (B) Bear a number that will identify it or distinguish it from any other machine;

65 (C) Be constructed to ensure that a voter may easily learn the method of operating it and  
66 may expeditiously cast his or her vote for all candidates of his or her choice and upon any public  
67 question; and

68 (D) Be accompanied by a mechanically or electronically operated instruction model which  
69 shows the arrangement of the ballot, party columns or rows and questions;

70 ~~(14)~~ (15) For electronic voting systems that utilize a screen upon which votes may be  
71 recorded by means of a stylus or by means of touch, they shall:

72 (A) Be constructed to provide for the direct electronic recording and tabulating of votes  
73 cast in a system specifically designed and engineered for the election application;

74 (B) Be constructed to prevent any voter from voting for more than the allowable number  
75 of candidates for any office, to include an audible or visual signal, or both, warning any voter who  
76 attempts to vote for more than the allowable number of candidates for any office or who attempts  
77 to cast his or her ballot prior to its completion and are constructed to include a visual or audible  
78 confirmation, or both, to the voter upon completion and casting of the ballot;

79 (C) Be constructed to present the entire ballot to the voter, in a series of sequential pages,  
80 and to ensure that the voter sees all of the ballot options on all pages before completing his or  
81 her vote and to allow the voter to review and change all ballot choices prior to completing and  
82 casting his or her ballot;

83 (D) Be constructed to allow election commissioners to spoil a ballot where a voter fails to  
84 properly cast his or her ballot, has departed the polling place and cannot be recalled by a poll  
85 clerk to complete his or her ballot;

86 (E) Be constructed to allow election commissioners, poll clerks or both to designate, mark  
87 or otherwise record provisional ballots;

88 (F) Consist of devices which are independent, nonnetworked voting systems in which each  
89 vote is recorded and retained within each device's internal nonvolatile electronic memory and  
90 contain an internal security, the absence of which prevents substitution of any other device;

91 (G) Store each vote in no fewer than three separate, independent, nonvolatile electronic  
92 memory components and that each device contains comprehensive diagnostics to ensure that  
93 failures do not go undetected;

94 (H) Contain a unique, embedded internal serial number for auditing purposes for each  
95 device used to activate, retain and record votes;

96 (I) Be constructed to record all preelection, election and post-election activities, including  
97 all ballot images and system anomalies, in each device's internal electronic memory and are to  
98 be accessible in electronic or printed form;

99 (J) Be constructed with a battery backup system in each device to, at a minimum, prevent

100 the loss of any votes, as well as all preelection, election and post-election activities, including all  
101 ballot images and system anomalies, stored in the device's internal electronic memory and to  
102 allow voting to continue for two hours of uninterrupted operation in case of an electrical power  
103 failure; and

104 (K) Be constructed to prevent the loss of any votes, as well as all preelection, election and  
105 post-election activities, including all ballot images and system anomalies, stored in each device's  
106 internal electronic memory even in case of an electrical and battery power failure.

NOTE: The purpose of this bill is to allow for "one-button" straight ticket voting.

Strike-throughs indicate language that would be stricken from a heading or the present law  
and underscoring indicates new language that would be added.