WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4438

By Delegates Espinosa, Holstein, Barrett, Criss,

Westfall, Clark, Householder, Summers, Hardy,

Kimble and Fast

[Introduced on January 31, 2022;

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 requiring electronic voting systems to be independent and nonnetworked with no

3   component connected to the internet.

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 each voter to change his or her vote for any candidate and upon any question

19   appearing upon the ballots or ballot labels up to the time when his or her ballot is deposited in the

20   ballot box or his or her ballot is cast by electronic means;

21   (6) It contains programming media containing sequentially numbered program instructions

22   and coded or otherwise protected from tampering or substitution of the media or program

23   instructions by unauthorized persons and capable of tabulating all votes cast in each election;

24   (7) It contains two standard validation test decks approved as to form and testing

25   capabilities by the State Election Commission;

26   (8) It correctly records and counts accurately all votes cast for each candidate and for and

27   against each question appearing upon the ballots;

28   (9) It permits a voter in a primary election to: (A) Vote only for the candidates of the party

29   for which the voter is legally permitted to vote; (B) vote for the candidates, if any, for nonpartisan

30   nominations or election; and (C) vote on public questions; and precludes the voter from voting for

31   any candidate seeking nomination by any other political party unless that political party has

32   determined that the voter may participate in its primary election;

33   (10) It, where applicable, is provided with means for sealing or electronically securing the

34   vote-recording device to prevent its use and to prevent tampering with the device, both before the

35   polls are open or before the operation of the vote-recording device for an election is begun and

36   immediately after the polls are closed or after the operation of the vote-recording device for an

37   election is completed;

38   (11) It has the capacity to contain the names of candidates constituting the tickets of at

39   least nine political parties and accommodates the wording of at least 15 questions;

40   (12) (A) Direct-recording electronic voting machines must generate a paper copy of each

41   voter's vote that will be automatically kept within a storage container that is locked, closely

42   attached to the direct-recording electronic voting machine and inaccessible to all but authorized

43   voting officials, who will handle such storage containers and such paper copies contained therein

44   in accordance with section nineteen of this article;

45   (B) The paper copy of the voter's vote shall be generated at the time the voter is at the

46   voting station using the direct-recording electronic voting machine;

47   (C) The voter may examine the paper copy visually or through headphone readout, and

48 may accept or reject the printed copy;

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

50   (E) Once the printed copy of the voter's votes is accepted by the voter as correctly

51 reflecting the voter's intent, but not before, it will automatically be stored for recounts or random

52 checks and the electronic vote will be cast within the computer mechanism of the direct-recording

53 electronic voting machine;

54   (F) Direct-recording electronic voting machines with a mandatory paper copy shall be

55 approved by the Secretary of State. The Secretary of State may promulgate rules and emergency

56 rules to implement or enforce this subsection pursuant to the provisions of section five, article

57 three, chapter twenty-nine-a of this code;

58   (13) Where vote-recording devices are used, they shall:

59   (A) Be durably constructed of material of good quality and in a workmanlike manner and

60 in a form which makes it safely transportable;

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

62   (C) Be constructed to ensure that a voter may easily learn the method of operating it and

63 may expeditiously cast his or her vote for all candidates of his or her choice and upon any public

64 question; and

65   (D) Be accompanied by a mechanically or electronically operated instruction model which

66 shows the arrangement of the ballot, party columns or rows and questions;

67   (14) For electronic voting systems that utilize a screen upon which votes may be recorded

68 by means of a stylus or by means of touch, they shall:

69   (A) Be constructed to provide for the direct electronic recording and tabulating of votes

70 cast in a system specifically designed and engineered for the election application;

71   (B) Be constructed to prevent any voter from voting for more than the allowable number

72 of candidates for any office, to include an audible or visual signal, or both, warning any voter who

73   attempts to vote for more than the allowable number of candidates for any office or who attempts

74   to cast his or her ballot prior to its completion and are constructed to include a visual or audible

75   confirmation, or both, to the voter upon completion and casting of the ballot;

76   (C) Be constructed to present the entire ballot to the voter, in a series of sequential pages,

77   and to ensure that the voter sees all of the ballot options on all pages before completing his or

78   her vote and to allow the voter to review and change all ballot choices prior to completing and

79   casting his or her ballot;

80   (D) Be constructed to allow election commissioners to spoil a ballot where a voter fails to

81   properly cast his or her ballot, has departed the polling place and cannot be recalled by a poll

82   clerk to complete his or her ballot;

83   (E) Be constructed to allow election commissioners, poll clerks or both to designate, mark

84   or otherwise record provisional ballots;

85   (F) Consist of devices which are independent, nonnetworked voting systems in which each

86   vote is recorded and retained within each device's internal nonvolatile electronic memory and

87   contain an internal security, the absence of which prevents substitution of any other device;

88   (G) Store each vote in no fewer than three separate, independent, nonvolatile electronic

89   memory components and that each device contains comprehensive diagnostics to ensure that

90   failures do not go undetected;

91   (H) Contain a unique, embedded internal serial number for auditing purposes for each

92   device used to activate, retain and record votes;

93   (I) Be constructed to record all pre-election, election and post-election activities, including

94   all ballot images and system anomalies, in each device's internal electronic memory and are to

95   be accessible in electronic or printed form;

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

97   the loss of any votes, as well as all pre-election, election and post-election activities, including all

98   ballot images and system anomalies, stored in the device's internal electronic memory and to

99 allow voting to continue for two hours of uninterrupted operation in case of an electrical power

100 failure; and

101   (K) Be constructed to prevent the loss of any votes, as well as all pre-election, election

102 and post-election activities, including all ballot images and system anomalies, stored in each

103 device's internal electronic memory even in case of an electrical and battery power failure.

104   (15) For purposes of this section, all voting systems utilized in any election shall be

105 independent, nonnetworked voting systems, and any component thereof, in whole or in part, shall

106 not at any time connect to the internet.

NOTE: The purpose of this bill requires electronic voting systems to be independent and nonnetworked with no component connected to the internet.

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