

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5247

By Delegate Butler and Ridenour

[Introduced January 26, 2024; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §3-1-2 and §3-1-39 of the Code of West Virginia, 1931, as amended;
2 to amend said code by adding thereto a new section, designated §3-1-39a; to amend and
3 reenact §3-1A-6 of said code; to amend and reenact §3-4A-1 of said code; and to amend
4 said code by adding thereto three new sections, designated §3-4A-35, §3-4A-36, and §3-
5 4A-37, all relating to providing for election reform; defining "Public Election Related
6 Information and Data;" allowing for the public disclosure of this data through the Freedom
7 of Information Act ("FOIA"); providing for the maintenance of Public Election Related
8 Information and Data including cast vote records, also known as "CVRs;" and providing for
9 restrictions of certain electronic software voting systems and contingent hand counting
10 procedures; providing for the random physical and internal operating code inspection of
11 electronic voting systems; and making sections of this bill effective from passage.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-2. Scope of chapter; definitions.

1 Unless restricted by the context, the provisions of this chapter shall apply to every general,
2 primary and special election in which candidates are nominated or elected or in which voters pass
3 upon any public question submitted to them, except that the provisions hereof shall be construed
4 to be operative in municipal elections only in those instances in which they are made expressly so
5 applicable.

6 Unless the context clearly requires a different meaning, as herein used:

7 "Voter" shall mean any person who possesses the statutory and Constitutional
8 qualifications for voting;

9 "Election" shall mean the procedure whereby the voters of this state or any subdivision
10 thereof elect persons to fill public offices, or elect members of a Constitutional convention, or vote
11 on public questions;

12 "Any election" or "all elections" shall include every general, primary, or special election held

13 in this state, or in any of its subdivisions, for the purpose of nominating or electing federal or state
14 officers, or county, city, town or village officers of any subdivision now existing or hereafter created,
15 or for the purpose of electing members of a Constitutional convention, or for voting upon any public
16 question submitted to the people of the state or any of the aforesaid subdivisions;

17 "Office" shall be construed to mean "public office" which shall include (1) any elective office
18 provided for by the Constitution or laws of the United States or of this state to which a salary or
19 other compensation attaches, and (2) membership in a Constitutional convention;

20 "Candidate" shall mean any person to be voted for at an election;

21 "Public question" shall mean any issue or proposition, now or hereafter required by the
22 governing body of this state or any of its subdivisions to be submitted to the voters of the state or
23 subdivision for decision at elections;

24 "Public Election Related Information and Data" shall mean all data contained within, or
25 transferred to or by the Election Management System database, except for the proprietary
26 database schema, including, but not limited to any and all executable code, data transferred via
27 secure physical or wireless network, specifically including any routing through any Albert Sensor
28 or analogous device or system, data transferred by and/or executable code contain within portable
29 drives, log files, data files, system audit files, and all other files of every kind and nature including
30 all election definition files, cast vote records (or "CVRs"), election summary with group detail,
31 precinct summary report(s) with group detail, numbered key canvass(es), results corrections
32 log(s), system log(s), machine log report(s) as CSV (comma separated values) files, election
33 management system audit log(s), administrative audit events report(s), and/or election audit
34 events report(s), or any electronic data performing the same or functional equivalence of the
35 previously listed categories of Data, with the widest possible presumption of inclusion within the
36 category to be given. Any and all Public Election Related Information and Data in the State of
37 West Virginia, inclusive of every precinct and county therein, shall be a public record available
38 upon written request by any registered voter of the State of West Virginia. Specific reference to the

39 West Virginia Freedom of Information Act, §29B-1-1 et seq. of this code shall not be required of
40 any registered voter of the State of West Virginia requesting Public Election Related Information
41 and Data, and the exemptions of §29B-1-4 et seq. of this code are specifically hereby decreed
42 completely inapplicable and unclaimable by the State, or any agency or political subdivision of the
43 State of West Virginia, in response to any request for Public Election Related Information and Data
44 made by any registered voter of the State of West Virginia. The provisions of this definition shall
45 become effective upon passage.

46 The term "minor" as used in article four, section one of the state Constitution and as used in
47 this chapter shall mean a person who has not become eighteen years of age.

§3-1-39. Illegal voting; affidavit; procedure; potential voter election fraud; referral to the
Attorney General.

1 (a) If at any time during the election any qualified voter shall appear at the polls for the
2 purpose of stating that any person who has voted is an illegal voter in the precinct, that person
3 shall be admitted to the election room and shall appear before a commissioner of election to make
4 an affidavit explaining why he or she believes the accused to be an illegal voter.

5 (b) All affidavits alleging illegal voting shall be placed in a strong and durable envelope by
6 the commissioners of election. The envelope shall be securely sealed and each of the
7 commissioners shall endorse his or her name on the back of the envelope. At the close of the
8 count the envelope shall be delivered to the clerk of the circuit court in accordance with section
9 sixteen, article five of this chapter and section eight, article six of this chapter. The clerk of the
10 circuit court shall carefully preserve the envelope containing the affidavits and deliver it, with the
11 seal unbroken, to the prosecuting attorney in the county. The prosecuting attorney shall proceed
12 as if it had been made before him or her.

13 (c) For the purposes of any referral to a prosecuting attorney or the Attorney General under
14 this section, or any other part of this code, the term "potential election fraud" shall mean a good
15 faith belief on the part of a lawfully registered West Virginia voter that voter fraud or election fraud

16 has occurred in the form of, but not limited to: ballot harvesting, ballot trafficking, algorithmic
17 manipulation of votes or vote tabulations, cyber attack or manipulation, inaccurate voter
18 registration rolls have caused manipulated electronic tabulation of votes, or that the electronic
19 tabulation of votes by any electronic voting system has been compromised or corrupted in any
20 manner which has caused an inaccurate or fraudulent tabulation of votes cast in an election. Any
21 instance of votes being electronically counted or tabulated with decimal values instead of a whole
22 numeric value of one (1) per vote shall be prima facie evidence of election fraud warranting
23 immediate and comprehensive forensic investigation. At no time shall any electronic voting
24 system, electronic poll book (or “e-poll book”), nor shall any computer connected to the electronic
25 voting system network be connected to, or be capable in its internal hardware of being connected
26 to any wireless or cellular network or by actual physical connection, nor shall the transfer of data of
27 any kind to or from an electronic voting system via portable hard drives or similar hardware for any
28 purpose other than the accurate and unmanipulated in any manner downloading and uploading of
29 the vote tabulation be allowed less than 30 days prior to opening of the early voting period, during
30 in person voting, the period between the closing of the polls and certification of election results, nor
31 for at least two weeks after the certification of election results. Any reasonable, good faith belief by
32 a lawfully registered West Virginia voter that prohibited internet connectivity of an electronic voting
33 system, electronic poll book (or “e-poll book”), computer connected to an electronic voting system
34 network, or use of portable hard drives or similar hardware for any purpose other than the accurate
35 and unmanipulated in any manner downloading and uploading of the vote tabulation has taken
36 place shall be prima facie evidence of election fraud warranting immediate and comprehensive
37 forensic investigation. The provisions of this section shall become effective upon passage.

§3-1-39a. Illegal voting; Voter fraud; Election fraud; Mandate of Constitutional Sheriff to
thoroughly investigate allegations; Duty of County Clerk and all election workers
and contractors to fully cooperate.

1 (a) If at any time during the election any qualified voter complains of illegal voting, voter

2 fraud or election fraud as set forth in §3-1-39 of this code, the sheriff, as the constitutional law
3 enforcement officer for the county, shall thoroughly and impartially investigate the allegations
4 stated in the affidavit or affidavits.

5 (b) Should the allegations require forensic information technology assets beyond the direct
6 capabilities of the county sheriff, the county sheriff may request support from other state agencies
7 with such capabilities, which such support such state agencies shall provide as a priority to the
8 county sheriff. If no state agency is capable of providing the necessary forensic information
9 technology assets, the county sheriff may contract with a qualified vendor of such assets, the cost
10 of which shall be submitted to the Joint Committee on Government and Finance for
11 reimbursement.

12 (c) Upon the county sheriff's completion of investigating the allegations of illegal voting,
13 voter fraud or election fraud, the county sheriff shall issue a report of the findings of such
14 investigation to the county prosecutor, county clerk, state Attorney General and local U.S. Attorney
15 stating the sheriff's conclusions as to whether any violations of state or federal election laws have
16 taken place, and if so, by whom.

17 (d) The provisions of this section shall become effective upon passage.

ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.

§3-1A-6. Powers and duties of Secretary of State; exercise of powers by appointees.

1 (a) The Secretary of State shall be the chief election official of the state. Except for those
2 rules required by the provisions of section five of this article to be promulgated by the commission,
3 the Secretary of State shall have the authority, after consultation with the state Election
4 Commission, of which he or she is a member, to make, amend and rescind such orders and to
5 promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this
6 code, as may be necessary to standardize and make effective the provisions of this chapter. All
7 election officials, county commissions, clerks of county commissions, clerks of circuit courts,
8 boards of ballot commissioners, election commissioners and poll clerks shall abide by any orders

9 that may be issued and any legislative rules that may be promulgated by the Secretary of State
10 and the commission.

11 (b) The Secretary of State also shall have authority to require collection and report of
12 statistical information and to require other reports by county commissions, clerks of county
13 commissions and clerks of circuit courts: Provided, That the Public Election Related Information
14 and Data including particularly the cast vote record, also known a "CVRs", or any comparable
15 digital recording of all electronic votes in any election shall be scrupulously maintained without
16 editing or manipulation of any kind, and shall be promptly provided by the clerk to any a lawfully
17 registered West Virginia voter who is a resident of the county wherein such records are created,
18 upon the request of such a lawfully registered voter. Such Public Election Related Information and
19 Data and cast vote records (CVRs) or comparable digital recording of all electronic votes shall be
20 preserved without editing or manipulation of any kind by the county clerk for a period of not less
21 than five (5) years after the date of election: *Provided, further, That this proviso shall become*
22 effective upon passage

23 (c) The Secretary of State shall also advise with election officials; furnish to the election
24 officials a sufficient number of indexed copies of the current election laws of West Virginia and the
25 administrative orders and rules issued or promulgated thereunder; investigate the administration
26 of election laws, frauds and irregularities in any registration or election; report violations of election
27 laws to the appropriate prosecuting officials; and prepare an annual report.

28 (d) The Secretary of State shall also have the power to administer oaths and affirmations,
29 issue subpoenas for the attendance of witnesses, issue subpoena duces tecum to compel the
30 production of books, papers, records, registration records and other evidence and fix the time and
31 place for hearing any matters relating to the administration and enforcement of this chapter, or the
32 rules promulgated by the state Election Commission or by the Secretary of State as the chief
33 election official of the state. In case of disobedience to a subpoena or subpoena duces tecum, he
34 or she may invoke the aid of any circuit court in requiring the attendance, evidence and testimony

35 of witnesses and the production of papers, books, records, registration records and other
36 evidence.

37 (e) (1) The Secretary of State shall also have the power, after consultation with the
38 Secretary of the Department of Military Affairs and Public Safety, to implement emergency
39 procedures and rules to ensure that all eligible voters have the opportunity to cast a valid ballot
40 and to uphold the integrity of an election in the event of natural disaster as declared by the
41 Governor of this state, terrorist attack, war or general emergency, if any of which occur during or
42 immediately preceding an election.

43 (2) For purposes of this subsection, a "general emergency" means circumstances
44 preventing the casting of ballots in one or more voting precincts. The chief judge of the circuit court
45 of the county where the casting of ballots is being prevented must declare by order that a general
46 emergency exists."

47 (f) All powers and duties vested in the Secretary of State pursuant to this article may be
48 exercised by appointees of the Secretary of State at his or her discretion, but the Secretary of
49 State shall be responsible for their acts.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-1. Use of electronic voting systems authorized.

1 (a) Electronic voting systems may be used for the purpose of registering or recording and
2 computing votes cast in general, special and primary elections: *Provided*, That the use of the
3 electronic voting systems shall be governed by the terms, conditions, restrictions and limitations
4 imposed by this article.

5 (b) Each county which is authorized to use electronic voting systems in any statewide
6 election shall establish a written policy for securing the electronic voting equipment. The policy
7 shall outline how the equipment is secured from tampering and under what circumstances county
8 personnel are authorized to have access. The clerk of the county commission shall submit a copy
9 of the policy to the Secretary of State by February 1 in each even-numbered year. The clerk shall

10 also submit a copy of any change to the policy within thirty days after its adoption.

1 (c) Copies of the program codes and the user and operator manuals and copies of all
 2 software and any other information, specifications, or documentation required by the Secretary of
 3 State relating to an approved electronic or electromechanical voting system and its equipment
 4 shall be made available to the public on the Secretary of State's website at least three months
 5 before an election in which it will be used: *Provided*, That if an election is scheduled less than three
 6 months from the effective date of the passage of this code section, then the Secretary of State
 7 shall post such codes and the user and operator manuals and copies of all software and any other
 8 information, specifications, or documentation required as soon as possible after the effective date:
 9 *Provided, further*, That this proviso shall become effective upon passage.

§3-4A-35. Restrictions on certain electronic voting software.

1 (a) The West Virginia Secretary of State may not approve any voting system that:

2 (1) Incorporates hardware or software that is designed, produced, owned, or licensed by
 3 an entity that is owned, operated, or majority-controlled by a foreign company or a domestic
 4 company registered in another country, including a domesticated foreign corporation, or by a
 5 person who is not a United States citizen; or

6 (2) Is produced, in whole or in part, including software, hardware, tabulating equipment,
 7 printers, and any other accessories, in a foreign country.

8 (b) The West Virginia Secretary of State's non-approval or approval rescission of any
 9 voting system pursuant to §3-4A-35 of this code shall require the hand counting of hand marked
 10 paper ballots at the precinct level in any county where such non-approval or approval rescission of
 11 any voting system occurs. Such hand marked paper ballot counting shall be conducted pursuant
 12 to the ballot counting procedures for paper ballot systems set forth in §3-6-6 of this code.

13 (c) The provisions of this section shall become effective upon passage.

§3-4A-36. Random physical inspection of electronic voting machines.

1 The Secretary of State shall ensure that random, annual physical and internal operating

2 code inspections in each county of voting tabulators, electronic poll books (or “e-poll books”),
3 touch screen ballot devices (usually referred to as direct recording electronic or “DRE” vote
4 machines), and any other election/voting equipment utilized is conducted to verify that no
5 tabulating equipment contains within its hardware components a wireless modem, cellular,
6 Bluetooth, or other wireless computer networking, intranet, ethernet, internet, other computer
7 networking capability, and for such purposes the mere operational system, software or firmware
8 disabling of wireless connection capability is expressly deemed to be insufficient to qualify for
9 approval; verify to no vote manipulating algorithms are present or executable in the software of the
10 tabulator; and verify that all vote tabulation is counted in whole number values of 1 or zero and that
11 no decimal value vote counting is present in the system.

12 The provisions of this section shall become effective upon passage

§3-4A-37. Public Election Related Information and Data subject to disclosure.

1 (a) Public Election Related Information and Data, as defined in §3-1-2 of this code, is
2 subject to full disclosure under the Freedom of Information Act (“FOIA”).

3 (b) Any written request for Public Election Related Information and Data shall be
4 promptly, comprehensively and transparently provided to the requestor, and such information,
5 including but not limited to data reports, is expressly considered a “no exception” public record
6 under FOIA.

7 (c) The provisions of this section shall become effective upon passage

NOTE: The purpose of this bill is to provide for election reform. The bill defines "Public Election Related Information and Data." The bill allows for the public disclosure of this data through the Freedom of Information Act ("FOIA"). The bill provides for the maintenance of Public Election Related Information and Data including cast vote records, also known as "CVRs." The bill provides for restrictions of certain electronic software voting systems and contingent hand counting procedures. Finally, the bill provides for the random physical inspection of electronic voting systems.

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