WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1966

ENROLLED

SENATE BILL NO. 8

(By Mr.

In Effect. Passage

PASSED

Feb. 10, 1966

In Effect. Ninety days from Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 2-15-66
ENROLLED
JUDICIARY
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 8
(MR. MORELAND and MR. FLOYD original sponsors)

[Passed February 10, 1966; in effect ninety days from passage.]

AN ACT to amend and reenact sections four, five, six, eight and
nine, article two; and sections six, seven and eight, article
four, chapter three of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, abolishing the
voting machine commission and transferring its duties and
functions to the state election commission; terminating the
terms of the members of the state election commission and
changing the composition thereof; providing for the ap-
pointment of members of the state election commission and
prescribing their qualifications, term, duties and functions;
and relating to the general powers, authority, functions
and duties of the secretary of state with respect to elec-

tions, and certain rules, regulations and orders concerning elections.

Be it enacted by the Legislature of West Virginia:

That sections four, five, six, eight and nine, article two; and sections six, seven and eight, article four, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Article 2. Registration of Voters.

Section 4. Election Commission Continued; Composition; Chairman; Traveling Expenses.—The “State Election Commission”, heretofore created, is hereby continued and, on and after the effective date of this section, shall be composed of the secretary of state, and four persons appointed by the governor, by and with the advice and consent of the senate. The commission shall, from this membership elect a chairman for a term of two years. Each member of the commission shall receive his actual and necessary traveling expense incurred in the performance of his duties.

Sec. 5. Qualification of Members of Commission.—No member of the commission appointed by the governor...
shall be a candidate for or hold any public office other
than that of membership in the commission; nor shall such
appointed member be a member of any committee of a
political party. Any person who, directly or indirectly:
(1) designs, owns, manufactures, distributes or sells any
voting machine, or (2) owns any patent rights or contract
rights thereto, or (3) has any interest in any joint venture,
partnership, firm, corporation or association designing,
owning, manufacturing, distributing or selling any voting
machine, or owning any patent rights or contract rights
thereto, shall be disqualified from serving as a member
of the commission. At least one member appointed by the
governor shall be selected with special reference to his
expert knowledge as a student of the problems of public
elections. Not more than two members appointed by the
governor shall be members of the same political party. In
case a member appointed by the governor becomes a
candidate for or is appointed to any other public office or
political committee, his office as member of the commis-

Sec. 6. Terms of Office of Commission Members; Ter-
2 mination of Terms of Present Members; Filling Vacancies.
3 —The terms of office of the members of the commission
4 shall be six years. Members in office shall continue until
5 the fourth day of June, one thousand nine hundred sixty-
6 six, when their terms shall terminate. The governor shall
7 then appoint two members for terms of three years expiring
8 on the fourth day of June, one thousand nine hundred
9 sixty-nine, and two members for terms of six years ex-
10 piring on the fourth day of June, one thousand nine
11 hundred seventy-two. Thereafter appointments shall be
12 made every six years. Appointments to fill vacancies
13 shall be for the unexpired term.

Sec. 8. Commission’s Powers and Duties.—The commis-
2 sion shall have the power and duty to approve or dis-
3 approve applications for approval of any voting machine
4 as provided in section seven, article four of this chapter.
5 The commission also shall serve as a body advisory to
6 the secretary of state, and, as such, shall have the follow-
7 ing powers and duties:
8 (1) To recommend policies and practices pertaining
9 to the registration of voters and the conduct of elections
10 generally;
(2) To investigate the work of the office of secretary of state pertaining to the duties of that office with respect to elections, and for this purpose to have access at reasonable times to pertinent records, books, papers and documents;

(3) To consider and study the election practices of other jurisdictions, with a view to determining the techniques used in eliminating fraud in elections and in simplifying election procedure;

(4) To advise or make recommendations to the governor relative to election practices and policy in the state; and

(5) To keep minutes of the transactions of each meeting of the commission, which shall be public records and filed with the secretary of state.

Sec. 9. Election Rules; Powers and Duties of Secretary of State; Exercise of Powers by Appointees.—The secretary of state shall be the chief registration official of the state. He shall have authority, upon consultation with the state election commission, of which he is a member, to make, amend and rescind such rules, regulations and
orders as may be necessary to carry out the policy of the Legislature, as contained in this article. It shall be the duty of all registration officials to abide by such rules, regulations and orders, which shall include:

(a) Uniform rules of procedure for registrars and other registration officials in the performance of their duties, as to time and manner of performance;

(b) Uniform rules for the purging of registration records;

(c) Uniform rules for challenging registrants; and

(d) Any other rules, regulations, or directions necessary to standardize and make effective the administration of the provisions of the article.

It shall be his further duty to advise with registration officials; to furnish to the registration officials a sufficient number of indexed copies of the current registration laws of West Virginia and the administrative orders issued thereunder; to investigate the administration of registration laws, frauds, and irregularities in any registration; to report violations of registration laws to the appropriate
prosecuting officials, and to prepare an annual report of
registration.

The secretary of state shall also have the power to issue
subpoenas, administer oaths and affirmations, summon
witnesses, compel the production of books, papers, records
and other evidence, and fix the time and place for hearing
any matters relating to the administration and enforce-
ment of this article. In case of disobedience to a subpoena
or other process, he may invoke the aid of any circuit
court in requiring the evidence and testimony of wit-
nesses and the production of papers, books and documents.

All powers and duties vested in the secretary of state
under this article may be exercised by appointees of the
secretary of state at his discretion, but the secretary of
state shall be responsible for their acts.

Article 4. Voting Machines.

Section 6. Bids and Contracts for Voting Machines;

False Swearing or Failure to Disclose Facts.—Contracts
for the purchase or lease of voting machines shall be
based on competitive bids. The county court shall solicit
sealed bids by sending requests by mail to all known man-
facturers and suppliers of voting machines which have
been previously approved by the state election commission
as hereinafter provided. The award of contracts of pur-
chase or lease shall be based on the quality, cost, specifica-
tions and suitability of the particular voting machines.

No bid shall be accepted by the county court unless
accompanied by a contract which shall provide that in
the event the bid is accepted the party or parties making
the sale or lease shall:

(1) Guarantee in writing to keep the machine or ma-
chines in good working order for five years without addi-
tional cost to the county court.

(2) Warrant to defend and indemnify the county court
against any claim for patent infringement, and in case any
machine or machines shall be held to be an infringement
of a valid patent, to obtain a license for the use of such
patent on the machines sold or leased to the county court
or to modify the machines so that the offending infringe-
ment is removed without altering the mechanical effici-
ency or statutory requirements of the machines; all at the
sole cost and expense of the supplier of the voting ma-
chines.
(3) Provide a bond with good corporate surety duly qualified to do business in West Virginia conditioned upon the due performance of said guaranty and said warrant, in a penal sum to be fixed by the county court.

No bid shall be accepted by the county court unless the party or parties submitting the bid shall file with the bid an affidavit:

(1) Disclosing the name and address of, and the amount of any contribution paid or to be paid to, any individual, partnership, corporation or association hired regularly and specially for the purpose, or partly for the purpose, of attempting to influence directly or indirectly the purchase or lease of the voting machine represented by the bid.

(2) Declaring that no individual, partnership, corporation or association not disclosed in said affidavit shall thereafter be regularly or specially hired and no contribution shall thereafter be paid for the purpose or partly for the purpose of attempting to influence directly or indirectly the purchase or lease of the voting machine represented by the bid.

For the purpose of this affidavit, the word “contribution”
shall mean payment, distribution, loan, advance, deposit, gift of money, property, benefit or other consideration, or any agreement providing for a payment, distribution, loan, advance, deposit, or gift of money, property, benefit, or other consideration at any future time.

Any person who shall knowingly or wilfully make any false or fraudulent statement, or who shall knowingly or wilfully fail to disclose any material fact in the affidavit required by this section shall be guilty of a felony, and, upon conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars or imprisonment in the state penitentiary for not less than one year nor more than three years, or both, in the discretion of the court.

In construing this section, the term “person” shall include an individual, partnership, committee, association, and any other organization or group of persons.

Sec. 7. Approval of Voting Machines by State Election Commission; Expenses.—Any person or corporation owning or being interested in any voting machine may apply to the state election commission to the end that such
machine may be examined and a report be made on its
accuracy, efficiency, capacity, and safety. The state elec-
tion commission shall appoint two mechanical experts
who are not members of the same political party to
examine the machine and make full report thereon to the
commission. They shall state in the report whether or
not the machine so examined complies with the require-
ments of this article and can be safely used by voters at
elections under the conditions prescribed in this article.
If the report be in the affirmative upon said question,
the machine may be approved by the commission and, if
approved by the commission, the machine of its make and
design may be adopted for use at elections as herein pro-
vided. Any form of voting machine not so approved shall
not be used at any election. Each of the two mechanical
experts appointed by the commission shall be entitled
to two hundred dollars for his compensation and expenses
in making such examination and report, and such com-
ensation shall be paid by the person or corporation ap-
plying for such examination, which sum shall be paid in
advance of making the examination and which sum shall
be the sole compensation to be received by any such ex-
cept for his work hereunder.

Sec. 8. Minimum Requirements of Voting Machines.—

A voting machine of particular make and design shall
not be approved by the state election commission or be
purchased, leased, or used, by any county court unless it
shall fulfill the following requirements:

(1) It shall secure or insure the voter absolute secrecy
in the act of voting, or, at the voter's election, shall pro-
vide for open voting;

(2) It shall be so constructed that no person except in
instances of open voting, as herein provided for, can see
or know for whom any voter has voted or is voting, and
that no voter or other person can, while the machine is
unlocked for operation, see or otherwise ascertain the
numerical total of votes cast for any candidate or for or
against any question;

(3) It shall permit each voter to vote at any election
for all persons and offices for whom and which he is law-
fully entitled to vote, whether or not the name of any such
person appears on a ballot label as a candidate; and it
shall permit each voter to vote for as many persons for an
office as he is lawfully entitled to vote for; and to vote for
or against any question upon which he is lawfully entitled
to vote;
(4) It shall preclude each voter from voting for any
person or office or upon any question for whom or which
and upon which he is not lawfully entitled to vote and
from voting for more persons for any office than he is
lawfully entitled to vote for, and from voting for any
candidate for the same office and upon any question more
than once;
(5) It shall permit each voter to deposit, write in, or
affix upon devices to be provided for that purpose, ballots
containing the names of persons for whom he desires to
vote whose names do not appear upon the machine ballot
labels;
(6) It shall permit each voter to change his vote for
any candidate and upon any question appearing upon
the ballot labels up to the time when he starts to register
his vote;
(7) It shall correctly register and accurately count all
voters cast for each candidate and for and against each
question appearing upon the ballot labels;

(8) It shall permit each voter at any election other
than primary elections, to vote a straight party ticket by
one device, and by one device to vote for all candidates
of one party for presidential electors; and to vote a mixed
ticket selected from the candidates of any and all parties
and from independent candidates;

(9) It shall be capable of adjustment by election of-

50 ficers at a primary election so as to permit each voter to

vote only for the candidates of the party with which he

has declared his affiliation, and so as to preclude him from

voting for any candidate seeking nomination by any other

political party, and so as to permit each voter to vote for

the candidates, if any, for nonpartisan nomination or elec-
tion and on public questions;

(10) It shall have separate voting devices for candi-
dates and questions, which shall be arranged in separate
rows or columns. It shall also be arranged so that one or
more adjacent rows or columns may be assigned to the
candidates of each political party at primary elections;
(11) It shall have a public counter or other device, the register of which is visible on the outside of the machine and which shall show the total number of voters who have voted on that machine in the election; also candidate and question counters or other devices which shall not be visible on the outside of the machine when the machine is unlocked for operation, and upon which are registered numerically the total votes cast for each candidate and question appearing on the ballot labels; also a protective counter or other device which will record the cumulative total number of movements of the registering mechanism;

(12) It shall be provided with locks and seals by the use of which all movement of the registering mechanism is prevented, both before the polls are open or before the operation of the machine for an election is begun and immediately after the polls are closed or after the operation of the machine for an election is completed;

(13) It shall have the capacity to contain the names of candidates constituting the tickets of at least nine political parties, and to accommodate the wording of at least fifteen questions;
(14) It shall be durably constructed of material of good quality and in a workmanlike manner and in a form which shall make it safely transportable;

(15) It shall be so constructed with frames for the placing of ballot labels and with transparent devices for the protection of such labels, that the labels on which are printed the names of candidates and their respective parties, titles of offices, and wording of questions shall be reasonably protected from mutilation, disfigurement or disarrangement;

(16) It shall bear a number that will identify it or distinguish it from any other machine;

(17) It shall be so constructed that a voter may easily learn the method of operating it and may expeditiously cast his vote for all candidates of his choice; and

(18) It shall be accompanied by a mechanically operated instruction model which shall show the arrangement of ballot labels, party columns or rows, and questions.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

O. Ray Parker  
Chairman Senate Committee

James W. Loop  
Chairman House Committee

Originated in the Senate.

Takes effect Ninety days from Passage.

I. Owen Kyzer  
Clerk of the Senate

A. Blankenship  
Clerk of the House of Delegates

Howard E. Carnes  
President of the Senate

H. Jacko White  
Speaker House of Delegates

The within Approved this the 15th day of February, 1966.

Nelle E. Segar  
Governor