

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1966

ENROLLED

*Com. Sub. for*

SENATE BILL NO. 8

(By Mr. *Ward* and Mr. *Floyd*  
*original sponsor*)

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

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**ENROLLED**  
JUDICIARY  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 8**

(MR. MORELAND and MR. FLOYD original sponsors)

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

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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 thousand 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 appointment 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

3 shall be a candidate for or hold any public office other  
4 than that of membership in the commission; nor shall such  
5 appointed member be a member of any committee of a  
6 political party. Any person who, directly or indirectly:  
7 (1) designs, owns, manufactures, distributes or sells any  
8 voting machine, or (2) owns any patent rights or contract  
9 rights thereto, or (3) has any interest in any joint venture,  
10 partnership, firm, corporation or association designing,  
11 owning, manufacturing, distributing or selling any voting  
12 machine, or owning any patent rights or contract rights  
13 thereto, shall be disqualified from serving as a member  
14 of the commission. At least one member appointed by the  
15 governor shall be selected with special reference to his  
16 expert knowledge as a student of the problems of public  
17 elections. Not more than two members appointed by the  
18 governor shall be members of the same political party. In  
19 case a member appointed by the governor becomes a  
20 candidate for or is appointed to any other public office or  
21 political committee, his office as member of the commis-  
22 sion shall be deemed immediately vacated.

**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 expir-  
8 ing 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;

11 (2) To investigate the work of the office of secretary  
12 of state pertaining to the duties of that office with respect  
13 to elections, and for this purpose to have access at reason-  
14 able times to pertinent records, books, papers and docu-  
15 ments;

16 (3) To consider and study the election practices of  
17 other jurisdictions, with a view to determining the tech-  
18 niques used in eliminating fraud in elections and in  
19 simplifying election procedure;

20 (4) To advise or make recommendations to the gov-  
21 ernor relative to election practices and policy in the state;  
22 and

23 (5) To keep minutes of the transactions of each meet-  
24 ing of the commission, which shall be public records and  
25 filed with the secretary of state.

**Sec. 9. Election Rules; Powers and Duties of Secretary  
2 of State; Exercise of Powers by Appointees.—**The secre-  
3 tary of state shall be the chief registration official of the  
4 state. He shall have authority, upon consultation with  
5 the state election commission, of which he is a member,  
6 to make, amend and rescind such rules, regulations and

7 orders as may be necessary to carry out the policy of the  
8 Legislature, as contained in this article. It shall be the duty  
9 of all registration officials to abide by such rules, regula-  
10 tions and orders, which shall include:

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

14 (b) Uniform rules for the purging of registration rec-  
15 ords;

16 (c) Uniform rules for challenging registrants; and

17 (d) Any other rules, regulations, or directions neces-  
18 sary to standardize and make effective the administration  
19 of the provisions of the article.

20 It shall be his further duty to advise with registration  
21 officials; to furnish to the registration officials a sufficient  
22 number of indexed copies of the current registration laws  
23 of West Virginia and the administrative orders issued  
24 thereunder; to investigate the administration of registra-  
25 tion laws, frauds, and irregularities in any registration;  
26 to report violations of registration laws to the appropriate

27 prosecuting officials, and to prepare an annual report of  
28 registration.

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

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

#### **Article 4. Voting Machines.**

##### **Section 6. Bids and Contracts for Voting Machines;**

2 **False Swearing or Failure to Disclose Facts.**—Contracts  
3 for the purchase or lease of voting machines shall be  
4 based on competitive bids. The county court shall solicit  
5 sealed bids by sending requests by mail to all known man-



6 ufacturers and suppliers of voting machines which have  
7 been previously approved by the state election commission  
8 as hereinafter provided. The award of contracts of pur-  
9 chase or lease shall be based on the quality, cost, specifica-  
10 tions and suitability of the particular voting machines.

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

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

18 (2) Warrant to defend and indemnify the county court  
19 against any claim for patent infringement, and in case any  
20 machine or machines shall be held to be an infringement  
21 of a valid patent, to obtain a license for the use of such  
22 patent on the machines sold or leased to the county court  
23 or to modify the machines so that the offending infringe-  
24 ment is removed without altering the mechanical effici-  
25 ency or statutory requirements of the machines; all at the  
26 sole cost and expense of the supplier of the voting ma-  
27 chines.

28 (3) Provide a bond with good corporate surety duly  
29 qualified to do business in West Virginia conditioned  
30 upon the due performance of said guaranty and said war-  
31 ranty, in a penal sum to be fixed by the county court.

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

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

41 (2) Declaring that no individual, partnership, corpor-  
42 ation or association not disclosed in said affidavit shall  
43 thereafter be regularly or specially hired and no contri-  
44 bution shall thereafter be paid for the purpose or partly  
45 for the purpose of attempting to influence directly or in-  
46 directly the purchase or lease of the voting machine  
47 represented by the bid.

48 For the purpose of this affidavit, the word "contribution"

49 shall mean payment, distribution, loan, advance, deposit,  
50 gift of money, property, benefit or other consideration,  
51 or any agreement providing for a payment, distribution,  
52 loan, advance, deposit, or gift of money, property, benefit,  
53 or other consideration at any future time.

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

63 In construing this section, the term "person" shall in-  
64 clude an individual, partnership, committee, association,  
65 and any other organization or group of persons.

**Sec. 7. Approval of Voting Machines by State Election**

2 **Commission; Expenses.**—Any person or corporation own-  
3 ing or being interested in any voting machine may apply  
4 to the state election commission to the end that such

5 machine may be examined and a report be made on its  
6 accuracy, efficiency, capacity, and safety. The state elec-  
7 tion commission shall appoint two mechanical experts  
8 who are not members of the same political party to  
9 examine the machine and make full report thereon to the  
10 commission. They shall state in the report whether or  
11 not the machine so examined complies with the require-  
12 ments of this article and can be safely used by voters at  
13 elections under the conditions prescribed in this article.  
14 If the report be in the affirmative upon said question,  
15 the machine may be approved by the commission and, if  
16 approved by the commission, the machine of its make and  
17 design may be adopted for use at elections as herein pro-  
18 vided. Any form of voting machine not so approved shall  
19 not be used at any election. Each of the two mechanical  
20 experts appointed by the commission shall be entitled  
21 to two hundred dollars for his compensation and expenses  
22 in making such examination and report, and such com-  
23 pensation shall be paid by the person or corporation ap-  
24 plying for such examination, which sum shall be paid in  
25 advance of making the examination and which sum shall

26 be the sole compensation to be received by any such ex-  
27 pert for his work hereunder.

**Sec. 8. Minimum Requirements of Voting Machines.—**

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

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

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

16 (3) It shall permit each voter to vote at any election  
17 for all persons and offices for whom and which he is law-  
18 fully entitled to vote, whether or not the name of any such  
19 person appears on a ballot label as a candidate; and it

20 shall permit each voter to vote for as many persons for an  
21 office as he is lawfully entitled to vote for; and to vote for  
22 or against any question upon which he is lawfully entitled  
23 to vote;

24 (4) It shall preclude each voter from voting for any  
25 person or office or upon any question for whom or which  
26 and upon which he is not lawfully entitled to vote and  
27 from voting for more persons for any office than he is  
28 lawfully entitled to vote for, and from voting for any  
29 candidate for the same office and upon any question more  
30 than once;

31 (5) It shall permit each voter to deposit, write in, or  
32 affix upon devices to be provided for that purpose, ballots  
33 containing the names of persons for whom he desires to  
34 vote whose names do not appear upon the machine ballot  
35 labels;

36 (6) It shall permit each voter to change his vote for  
37 any candidate and upon any question appearing upon  
38 the ballot labels up to the time when he starts to register  
39 his vote;

40 (7) It shall correctly register and accurately count all

41 votes cast for each candidate and for and against each  
42 question appearing upon the ballot labels;

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

49 (9) It shall be capable of adjustment by election of-  
50 ficers at a primary election so as to permit each voter to  
51 vote only for the candidates of the party with which he  
52 has declared his affiliation, and so as to preclude him from  
53 voting for any candidate seeking nomination by any other  
54 political party, and so as to permit each voter to vote for  
55 the candidates, if any, for nonpartisan nomination or elec-  
56 tion and on public questions;

57 (10) It shall have separate voting devices for candi-  
58 dates and questions, which shall be arranged in separate  
59 rows or columns. It shall also be arranged so that one or  
60 more adjacent rows or columns may be assigned to the  
61 candidates of each political party at primary elections;

62 (11) It shall have a public counter or other device, the  
63 register of which is visible on the outside of the machine  
64 and which shall show the total number of voters who  
65 have voted on that machine in the election; also candidate  
66 and question counters or other devices which shall not be  
67 visible on the outside of the machine when the machine  
68 is unlocked for operation, and upon which are registered  
69 numerically the total votes cast for each candidate and  
70 question appearing on the ballot labels; also a protective  
71 counter or other device which will record the cumulative  
72 total number of movements of the registering mechanism;

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

79 (13) It shall have the capacity to contain the names of  
80 candidates constituting the tickets of at least nine politi-  
81 cal parties, and to accommodate the wording of at least  
82 fifteen questions;



83 (14) It shall be durably constructed of material of good  
84 quality and in a workmanlike manner and in a form  
85 which shall make it safely transportable;

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

93 (16) It shall bear a number that will identify it or dis-  
94 tinguish it from any other machine;

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

98 (18) It shall be accompanied by a mechanically oper-  
99 ated instruction model which shall show the arrangement  
100 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. Rayfarber*  
Chairman Senate Committee

*James W. Loop*  
Chairman House Committee

Originated in the Senate.

Takes effect *thirty days from* Passage.

*Howard K. Lee*  
Clerk of the Senate

*C. A. Blankenship*  
Clerk of the House of Delegates

*Howard Larson*  
President of the Senate

*H. Sabau White*  
Speaker House of Delegates

The within *Approved* this the *15<sup>th</sup>*  
day of *February*, 1966.

*Herbert C. Smith*  
Governor



OFFICE OF THE GOVERNOR  
FEB 15 2 01 PM '66

PRESENTED TO THE  
GOVERNOR

Date

2/14/66

Time

3:25 PM

FILED

FEB 15 7 55 PM '66

OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA