

No. 1381 ✓

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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## ENROLLED

Com. Sub. for  
HOUSE BILL No. 1381

(By Mr. Del Burke)

Passed April 13, 1985

In Effect 90 Days From Passage



**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 1381**  
(By DELEGATE BURKE)

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[Passed April 13, 1985; in effect ninety days from passage.]

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AN ACT to amend and reenact sections twenty-four, twenty-five and twenty-seven, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article four of said chapter three; to further amend said article four by adding thereto a new section, designated section twelve-a; to amend and reenact section thirteen, article four-a of said chapter three; and to further amend said article four-a by adding thereto a new section, designated section thirteen-a, relating generally to the delivery and receipt of election supplies; time limit for delivery of election supplies to election commissioners in counties using paper ballots, voting machines and electronic voting and to the appropriate officers in municipal elections; providing for the delivery of election supplies by special messenger in counties using paper ballots, voting machines and electronic voting; and providing for inspection, maintenance, removal and certification of ballot cards used in electronic voting.

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

That sections twenty-four, twenty-five and twenty-seven, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twelve, article four of said chapter three be amended and

reenacted; that said article four be further amended by adding thereto a new section, designated section twelve-a; that section thirteen, article four-a of said chapter three be amended and reenacted; and that said article four-a be further amended by adding thereto a new section, designated section thirteen-a, all to read as follows:

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

**§3-1-24. Obtaining and delivering election supplies.**

1 It shall be the duty of the board of ballot commissioners  
2 to appoint one or more of the commissioners of election at  
3 each precinct of the county to attend at the offices of the clerks  
4 of the circuit court and county commission, as the case may  
5 be, at least one day before each election to receive the ballots,  
6 ballot boxes, poll books, registration records and forms and  
7 all other supplies and materials for conducting the election at  
8 the respective precincts. The clerks shall take a receipt for the  
9 respective materials delivered to the above commissioner or  
10 commissioners of election, and shall file such receipt in their  
11 respective offices. It shall be the duty of such commissioners  
12 to receive such supplies and materials from the respective  
13 clerks and to deliver the same with the seal of all sealed  
14 packages unbroken, at the election precinct in time to open  
15 the election.

16 Such commissioner or commissioners, if they perform such  
17 services, shall receive the per diem and mileage rate prescribed  
18 by law for this service.

19 Ballots shall be delivered in sealed packages with seals  
20 unbroken. For general and special elections the ballots so  
21 delivered shall not be in excess of one and one-twentieth times  
22 the number of registered voters in the precinct. For primary  
23 elections the ballots for each party shall be in a separately  
24 sealed package containing not more than one and one-  
25 twentieth times the number of registered voters of such party  
26 in the election precinct.

27 For primary elections one copy of the poll books, including  
28 the forms for oaths of commissioners of election and poll  
29 clerks written or printed thereon, shall be supplied at each  
30 voting precinct for each political party appearing on the  
31 primary ballot.

32 There shall be two ballot boxes for each election precinct  
33 for which a receiving and a counting board of election  
34 commissioners have been appointed.

**§3-1-25. Supplies by special messenger.**

1 In case any commissioner of election so appointed shall fail  
2 to appear at the offices of the clerks of such county  
3 commissions and circuit courts, by the close of the clerk's  
4 office on the day prior to any election, the board of ballot  
5 commissioners, the chairman thereof, or the circuit clerk shall  
6 forthwith dispatch a special messenger to the commissioners  
7 of election of each respective precinct with the ballots,  
8 registration records, ballot boxes, poll books and other  
9 supplies for such precinct. Such messenger, if not a county  
10 employee, shall be allowed five dollars for this service and,  
11 even if he be a county employee, twenty cents a mile for the  
12 distance necessary to be traveled by him, and shall promptly  
13 report to the clerks of the circuit court and county commis-  
14 sion, respectively, and file with such clerks the receipts of the  
15 person to whom he delivered such ballots and other supplies,  
16 and his affidavit, stating when and to whom he delivered them.

**§3-1-27. Municipal precinct registration records.**

1 At least one day prior to every municipal election, it shall  
2 be the duty of the appropriate officer designated by the  
3 municipality to procure from the municipal precinct file in the  
4 office of the clerk of the county commission the registration  
5 records necessary for the conduct of such election.

6 Such records shall, within ten days after the date of the  
7 municipal election, be returned to the office of the clerk of the  
8 county commission by the appropriate officer or officers  
9 designated by the municipality.

10 In case of a contested municipal election, the registration  
11 record of any challenged voter shall be made available by the  
12 clerk of the county commission to the officer or tribunal  
13 empowered to determine the contest. Such record shall be  
14 returned to the office of the clerk of the county commission  
15 within a reasonable time after the contest shall have been  
16 finally decided.

17 The clerk of the county commission shall acknowledge the  
18 release and return of the registration records under this section

19 by the issuance of appropriate receipts.

20 In the event any municipal registration record is lost,  
21 destroyed, defaced or worn in any way as to warrant  
22 replacement, it shall be the duty of the clerk of the county  
23 commission to prepare a duplicate of such record and it shall  
24 be the duty of the municipality to pay for such replacement.

#### ARTICLE 4. VOTING MACHINES.

##### **§3-4-12. Inspection of machines; duties of county commission, ballot commissioners and election commissioners; keys and records relating to machines.**

1 When the clerk of the county commission has completed the  
2 preparation of the voting machines, as provided in the next  
3 preceding section, and not later than seven days before the day  
4 of the election, he shall notify the members of the county  
5 commission and the ballot commissioners that the machines  
6 are ready for use. Thereupon the members of the county  
7 commission and the ballot commissioners shall convene at the  
8 office of the clerk, or at such other place wherein the voting  
9 machines are stored, not later than five days before the day  
10 of the election, and shall examine the machines to determine  
11 whether the requirements of this article have been met. Any  
12 candidate, and one representative of each political party  
13 having candidates to be voted on at the election, may be  
14 present during such examination. If the machines are found  
15 to be in proper order, the members of the county commission  
16 and the ballot commissioners shall endorse their approval in  
17 the book in which the clerk entered the numbers of the  
18 machines opposite the numbers of the precincts. The clerk  
19 shall then deliver the keys to the voting machines to the ballot  
20 commissioners who shall give a receipt for the keys, which  
21 receipt shall contain identification of such keys. Not later than  
22 one day before the election the election commissioner of each  
23 precinct who shall have been previously designated by the  
24 ballot commissioners, shall attend at the office of the clerks  
25 of the circuit court and county commission of such county to  
26 receive the key or keys to the device covering the registering  
27 counters and such other keys as may be necessary for the  
28 operation of the machine in registering votes, and to receive  
29 the other necessary election records, books and supplies  
30 required by law. Such election commissioners shall receive the

31 per diem mileage rate prescribed by law for this service. Such  
 32 election commissioners shall give the ballot commissioners a  
 33 receipt for such keys, records, books and supplies, and such  
 34 receipt shall contain identification of such keys. The master  
 35 key and all other keys shall remain in the possession of the  
 36 clerk of the county commission.

**§3-4-12a. Supplies by special messenger.**

1 In case any commissioner of election shall fail to appear at  
 2 the offices of the clerks of the county commission and circuit  
 3 court by the close of the clerks' offices on the day prior to  
 4 any election, the board of ballot commissioners, the chairman  
 5 thereof or the circuit clerk shall cause all necessary election  
 6 records, books and supplies to be delivered by special  
 7 messenger in the same manner and under the same terms and  
 8 conditions as is provided for the dispatch of the special  
 9 messenger under the provisions of section twenty-five, article  
 10 one of this chapter.

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

**§3-4A-13. Inspection of vote recording devices and ballot cards;  
 duties of county commission, ballot commissioners  
 and election commissioners; records relating to vote  
 recording devices and ballot cards; receipt of election  
 materials by ballot commissioners.**

1 When the clerk of the county commission has completed the  
 2 preparation of the vote recording devices as provided in  
 3 section twelve of this article and the ballot cards as provided  
 4 in section twenty-one, article one of this chapter, and not later  
 5 than seven days before the day of the election, he shall notify  
 6 the members of the county commission and the ballot  
 7 commissioners that the devices are ready for use. Thereupon  
 8 the members of the county commission and the ballot  
 9 commissioners shall convene at the office of the clerk or at  
 10 such other place wherein the vote recording devices and ballot  
 11 cards are stored, not later than five days before the day of  
 12 the election, and shall inspect the devices and the ballot cards  
 13 to determine whether the requirements of this article have been  
 14 met. Notice of the place and time of such inspection shall be  
 15 published, no less than three days prior thereto, as a Class I-  
 16 O legal advertisement in compliance with the provisions of  
 17 article three, chapter fifty-nine of this code, and the

18 publication area for such publication shall be the county  
19 involved. Any candidate, and one representative of each  
20 political party on the ballot may be present during such  
21 examination. If the devices and ballot cards are found to be  
22 in proper order, the members of the county commission and  
23 the ballot commissioners shall endorse their approval in the  
24 book in which the clerk entered the numbers of the devices  
25 opposite the numbers of the precincts. The devices and the  
26 ballot cards shall then be secured in double lock rooms. The  
27 county clerk and the president or president pro tempore of the  
28 county commission shall each have a key. The rooms shall be  
29 unlocked only in their presence and only for the removal of  
30 the devices and the ballot cards for transportation to the polls.  
31 Upon such removal of the devices and ballot cards, the county  
32 clerk and president or president pro tempore of the county  
33 commission shall certify in writing signed by them that the  
34 devices and packages of ballot cards were found to be sealed  
35 when removed for transportation to the polls.

36 Not later than one day before the election the election  
37 commissioner of each precinct who shall have been previously  
38 designated by the ballot commissioners, shall attend at the  
39 office of the clerks of the circuit court and county commission  
40 of such county to receive the necessary election records, books  
41 and supplies required by law. Such election commissioners  
42 shall receive the per diem mileage rate prescribed by law for  
43 this service. Such election commissioners shall give the ballot  
44 commissioners a sequentially numbered written receipt, on a  
45 printed form, provided by the clerk of the county commission,  
46 for such records, books and supplies. Such receipt shall be  
47 prepared in duplicate. One copy of the receipt shall remain  
48 with the clerk of the county commission and one copy shall  
49 be delivered to the president or president pro tempore of the  
50 county commission.

**§3-4A-13a. Supplies by special messenger.**

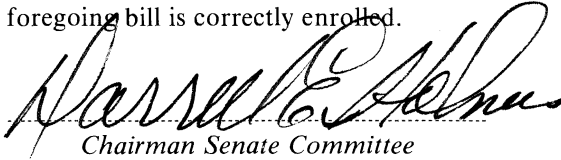
1 In case any commissioner of election shall fail to appear at  
2 the offices of the clerks of the county commission and circuit  
3 court by the close of the clerks' offices on the day prior to  
4 any election, the board of ballot commissioners, the chairman  
5 thereof or the circuit clerk shall cause all necessary election  
6 records, books and supplies to be delivered by special  
7 messenger in the same manner and under the same terms and

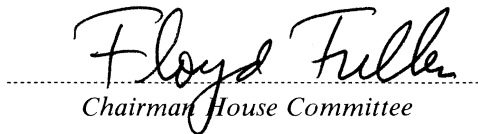
8 conditions as is provided for the dispatch of the special  
9 messenger under the provisions of section twenty-five, article  
10 one of this chapter.

*James M. Smith*  
*James M. Smith*  
*James M. Smith*



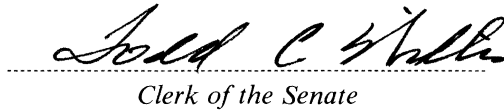
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

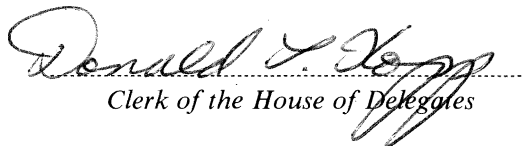
  
Chairman Senate Committee

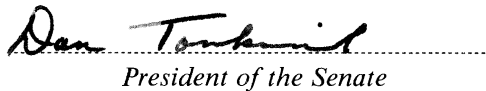
  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

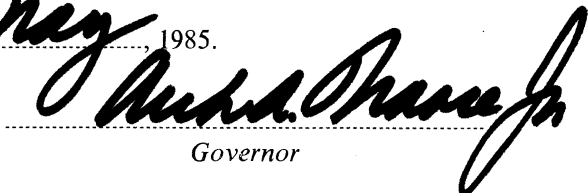
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within  approved this the  day of  May, 1985.

  
Governor

PRESENTED TO THE

GOVERNOR

Date

4/19/85

Time

8:22 p.m.