

#4150

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

HOUSE BILL No. 4150

(By ~~MR.~~ *Delegate Humphreys*)



Passed *February 11,* 1988
In Effect *From* Passage

ENROLLED
H. B. 4150
(By DELEGATE HUMPHREYS)

[Passed February 11, 1988; in effect from passage.]

AN ACT to amend and reenact sections two and nine, article four-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the electronic voting systems; amending the definitions and terminology to allow for tabulating program instructions on modern and advanced technology program media; and providing for an additional measure to secure the new program media from tampering by unauthorized persons.

Be it enacted by the Legislature of West Virginia:

That sections two and nine, article four-a, 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 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-2. Definitions.

- 1 As used in this article, unless otherwise specified:
- 2 (a) "Automatic tabulating equipment" means all
3 apparatus necessary to electronically count votes
4 recorded on ballot cards and tabulate the results;
- 5 (b) "Ballot card" means a tabulating card or paper on
6 which votes may be recorded by means of perforating
7 or marking in electronic sensitized ink or pencil;
- 8 (c) "Ballot labels" means the cards, papers, booklet,

9 pages or other material showing the names of offices
10 and candidates and the statements of measures to be
11 voted on, which are placed on the vote recording device;

12 (d) "Central counting center" means a facility
13 equipped with suitable and necessary automatic tabulat-
14 ing equipment, selected by the county commission, for
15 the electronic counting of votes recorded on ballot cards;

16 (e) "Electronic voting system" is a means of conduct-
17 ing an election whereby votes are recorded on ballot
18 cards by means of marking with electronic sensitized
19 ink or perforating, and such votes are subsequently
20 counted by automatic tabulating equipment at the
21 central counting center;

22 (f) "Program deck" means the actual punch card deck
23 or decks, or a computer program disk, diskette, tape or
24 other programming media, containing the program for
25 counting and tabulating the votes, including the
26 "application program deck";

27 (g) "Application program deck" means the punch
28 card deck containing specific option cards, used and
29 necessary to modify the program of general application,
30 to conduct and tabulate a specific election according to
31 applicable law;

32 (h) "Standard validation test deck" means a deck of
33 ballot cards wherein all voting possibilities which can
34 occur in an election are represented; and

35 (i) "Vote recording device" means equipment in which
36 ballot labels and ballot cards are placed to allow a voter
37 to record his vote.

§3-4A-9. Minimum requirements of electronic voting systems.

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

6 (1) It shall secure or ensure the voter absolute secrecy
7 in the act of voting, or, at the voter's election, shall

8 provide 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;

12 (3) It shall permit each voter to vote at any election
13 for all persons and offices for whom and which he is
14 lawfully entitled to vote, whether or not the name of any
15 such person appears on a ballot label as a candidate; and
16 it shall permit each voter to vote for as many persons
17 for an office as he is lawfully entitled to vote for; and
18 to vote for or against any question upon which he is
19 lawfully entitled to vote. The automatic tabulating
20 equipment used in such electronic voting systems shall
21 reject choices recorded on any ballot card or paper
22 ballot if the number of such choices exceeds the number
23 to which a voter is entitled;

24 (4) It shall permit each voter to deposit, write in, or
25 affix upon devices to be provided for that purpose,
26 ballots containing the names of persons for whom he
27 desires to vote whose names do not appear upon the
28 ballot labels;

29 (5) It shall permit each voter to change his vote for
30 any candidate and upon any question appearing upon
31 the ballot labels up to the time when his ballot or ballot
32 card is deposited in the ballot box;

33 (6) It shall contain a program deck consisting of cards
34 that are sequentially numbered, or consisting of a
35 computer program disk, diskette, tape or other pro-
36 gramming media containing sequentially numbered
37 program instructions and coded or otherwise protected
38 from tampering or substitution of the media or program
39 instructions by unauthorized persons, and capable of
40 tabulating all votes cast in each election;

41 (7) It shall contain two standard validation test decks
42 approved as to form and testing capabilities by the state
43 election commission;

44 (8) It shall correctly record and count accurately all
45 votes cast for each candidate and for and against each
46 question appearing upon the ballots or ballot labels;

47 (9) It shall permit each voter at any election other
48 than primary elections, by one mark or punch to vote
49 a straight party ticket, and by one mark or punch to vote
50 for all candidates of one party for presidential electors;
51 and to vote a mixed ticket selected from the candidates
52 of any and all parties and from independent candidates;
53 and it shall permit the proper counting, to the fullest
54 extent possible, of all votes cast for all candidates:
55 *Provided*, That in the event of cross-over voting from a
56 straight party ticket, the system shall not discard any
57 vote on the straight ticket, unless (i) a candidate in a
58 single selection contest opposite the discarded vote on
59 the straight ticket has been clearly chosen by the voter,
60 or (ii) the voter, by mark or punch has clearly indicated
61 which choices on each ticket, not in excess of the total
62 number permitted, the voter has made, or (iii) the
63 choices made by the voter are so contradictory that the
64 voter's choice is indiscernible, in which event, all votes
65 for the candidates for such office shall be discarded;

66 (10) It shall permit each voter in primary elections to
67 vote only for the candidates of the party with which he
68 has declared his affiliation, and preclude him from
69 voting for any candidate seeking nomination by any
70 other political party, permit him to vote for the
71 candidates, if any, for nonpartisan nomination or
72 election, and permit him to vote on public questions;

73 (11) It shall be provided with means for sealing the
74 vote recording device to prevent its use and to prevent
75 tampering with ballot labels, both before the polls are
76 open or before the operation of the vote recording device
77 for an election is begun and immediately after the polls
78 are closed or after the operation of the vote recording
79 device for an election is completed;

80 (12) It shall have the capacity to contain the names
81 of candidates constituting the tickets of at least nine
82 political parties, and to accommodate the wording of at
83 least fifteen questions;

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

87 (14) It shall be so constructed with frames for the
88 placing of ballot labels and with suitable means for the
89 protection of such labels, that the labels on which are
90 printed the names of candidates and their respective
91 parties, titles of offices, and wording of questions shall
92 be so reasonably protected from mutilation, disfigure-
93 ment or disarrangement;

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

96 (16) It shall be so constructed that a voter may easily
97 learn the method of operating it and may expeditiously
98 cast his vote for all candidates of his choice, and upon
99 any public question; and

100 (17) It shall be accompanied by a mechanically
101 operated instruction model which shall show the
102 arrangement of ballot labels, party columns or rows,
103 and questions.

*The committee
on the subject of
the proposed amendment*

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

Bruce O. Williams
Chairman Senate Committee

Bernard W. Kelly
Chairman House Committee

Originating in the House.

Takes effect from passage.

Todd C. Hicks
Clerk of the Senate

Donald L. Hopp
Clerk of the House of Delegates

Alan Tombari
President of the Senate

John A. Harney
Speaker of the House of Delegates

The within *approved* this the *24th*
day of *February*, 1988.

John A. Harney
Governor

PRESENTED TO THE

GOVERNOR

Date 2/18/88

Time 3:26 p.m.

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SECRETARIAT OF STATE