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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2950

(By Mr. Speaker, Mr. Kiss, and Delegates Longstreth,
Manchin, Caputo, Perdue, Martin, Amores and Beane)



Passed April 8, 2005

In Effect Ninety Days from Passage

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AN ACT to amend and reenact §3-4A-9 and §3-4A-28 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §3-4A-9a and §3-4A-9b, all relating to electronic voting systems; requiring a paper copy of a voter's votes when using an electronic voting system to vote; providing that the paper copy can only be used for a random count of precincts or if an election is contested, challenged or disputed; providing that the Secretary of State may promulgate rules; authorizing use of ballot-marking accessible voting systems; setting forth minimum requirements for ballot-marking accessible voting systems; providing for use of ballot-scanning device; establishing standards for ballot-scanning devices; and making certain technical changes that clarify access to maintenance and examination of sealed post-election materials and

equipment during the canvass and requiring the immediate resealing.

Be it enacted by the Legislature of West Virginia:

That §3-4A-9 and §3-4A-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §3-4A-9a and §3-4A-9b, all to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

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

1 An electronic voting system of particular make and design
2 may not be approved by the State Election Commission or be
3 purchased, leased or used by any county commission unless it
4 meets the following requirements:

5 (1) It secures or ensures the voter absolute secrecy in the act
6 of voting or, at the voter's election, provides for open voting;

7 (2) It is constructed to ensure that no person, except in
8 instances of open voting as provided in this section, can see or
9 know for whom any voter has voted or is voting;

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

20 (4) It permits each voter to deposit, write in, affix upon a
21 ballot, card, envelope or other medium to be provided for that
22 purpose, ballots containing the names of persons for whom he
23 or she desires to vote whose names do not appear upon the
24 ballots or ballot labels;

25 (5) It permits each voter to change his or her vote for any
26 candidate and upon any question appearing upon the ballots or
27 ballot labels up to the time when his or her ballot is deposited
28 in the ballot box or his or her ballot is cast by electronic means;

29 (6) It contains a program deck consisting of cards that are
30 sequentially numbered or consisting of a computer program
31 disk, diskette, tape or other programming media containing
32 sequentially numbered program instructions and coded or
33 otherwise protected from tampering or substitution of the media
34 or program instructions by unauthorized persons and capable of
35 tabulating all votes cast in each election;

36 (7) It contains two standard validation test decks approved
37 as to form and testing capabilities by the State Election Com-
38 mission;

39 (8) It correctly records and counts accurately all votes cast
40 for each candidate and for and against each question appearing
41 upon the ballots or ballot labels;

42 (9) It permits each voter at any election other than primary
43 elections by one mark or punch to vote a straight party ticket,
44 as provided in section five, article six of this chapter;

45 (10) It permits each voter in primary elections to vote only
46 for the candidates of the party for which he or she is legally
47 permitted to vote and precludes him or her from voting for any
48 candidate seeking nomination by any other political party,
49 permits him or her to vote for the candidates, if any, for

50 nonpartisan nomination or election and permits him or her to
51 vote on public questions;

52 (11) It, where applicable, is provided with means for
53 sealing or electronically securing the vote recording device to
54 prevent its use and to prevent tampering with ballot labels, both
55 before the polls are open or before the operation of the vote
56 recording device for an election is begun and immediately after
57 the polls are closed or after the operation of the vote recording
58 device for an election is completed;

59 (12) It has the capacity to contain the names of candidates
60 constituting the tickets of at least nine political parties and
61 accommodates the wording of at least fifteen questions;

62 (13) (A) Direct recording electronic voting machines must
63 generate a paper copy of each voter's votes that will be auto-
64 matically kept within a storage container, that is locked, closely
65 attached to the direct recording electronic voting machine, and
66 inaccessible to all but authorized voting officials, who will
67 handle such storage containers and such paper copies contained
68 therein in accordance with section nineteen of this article.

69 (B) The paper copy of the voter's vote shall be generated at
70 the time the voter is at the voting station using the direct
71 recording electronic voting machine.

72 (C) The voter may examine the paper copy visually or
73 through headphone readout, and may accept or reject the
74 printed copy.

75 (D) The voter may not touch, handle or manipulate the
76 printed copy manually in any way.

77 (E) Once the printed copy of the voter's votes is accepted
78 by the voter as correctly reflecting the voter's intent, but not
79 before, it will automatically be stored for recounts or random

80 checks and the electronic vote will be cast within the computer
81 mechanism of the direct recording electronic voting machine.

82 (F) Direct recording electronic voting machines with a
83 mandatory paper copy shall be approved by the Secretary of
84 State. The Secretary of State may promulgate rules and emer-
85 gency rules to implement or enforce this subsection pursuant to
86 the provisions of section five, article three, chapter twenty-nine-
87 a of this code.

88 (14) Where vote recording devices are used, they shall:

89 (A) Be durably constructed of material of good quality and
90 in a workmanlike manner and in a form which makes it safely
91 transportable;

92 (B) Be constructed with frames for the placing of ballot
93 labels that the labels upon which are printed the names of
94 candidates and their respective parties, titles of offices and
95 wording of questions are reasonably protected from mutilation,
96 disfigurement or disarrangement or are constructed to ensure
97 that the screens upon which appear the names of the candidates
98 and their respective parties, titles of offices and wording of
99 questions are reasonably protected from any modification;

100 (C) Bear a number that will identify it or distinguish it from
101 any other machine;

102 (D) Be constructed to ensure that a voter may easily learn
103 the method of operating it and may expeditiously cast his or her
104 vote for all candidates of his or her choice and upon any public
105 question;

106 (E) Be accompanied by a mechanically or electronically
107 operated instruction model which shows the arrangement of
108 ballot labels, party columns or rows, and questions;

109 (F) For electronic voting systems that utilize a screen upon
110 which votes may be recorded by means of a stylus or by means
111 of touch, be constructed to provide for the direct electronic
112 recording and tabulating of votes cast in a system specifically
113 designed and engineered for the election application;

114 (G) For electronic voting systems that utilize a screen upon
115 which votes may be recorded by means of a stylus or by means
116 of touch, be constructed to prevent any voter from voting for
117 more than the allowable number of candidates for any office, to
118 include an audible or visual signal, or both, warning any voter
119 who attempts to vote for more than the allowable number of
120 candidates for any office or who attempts to cast his or her
121 ballot prior to its completion and are constructed to include a
122 visual or audible confirmation, or both, to the voter upon
123 completion and casting of the ballot;

124 (H) For electronic voting systems that utilize a screen upon
125 which votes may be recorded by means of a stylus or by means
126 of touch, be constructed to present the entire ballot to the voter,
127 in a series of sequential pages, and to ensure that the voter sees
128 all of the ballot options on all pages before completing his or
129 her vote and to allow the voter to review and change all ballot
130 choices prior to completing and casting his or her ballot;

131 (I) For electronic voting systems that utilize a screen upon
132 which votes may be recorded by means of a stylus or by means
133 of touch, be constructed to allow election commissioners to
134 spoil a ballot where a voter fails to properly cast his or her
135 ballot, has departed the polling place and cannot be recalled by
136 a poll clerk to complete his or her ballot;

137 (J) For electronic voting systems that utilize a screen upon
138 which votes may be recorded by means of a stylus or by means
139 of touch, be constructed to allow election commissioners, poll

140 clerks, or both, to designate, mark or otherwise record provi-
141 sional ballots;

142 (K) For electronic voting systems that utilize a screen upon
143 which votes may be recorded by means of a stylus or by means
144 of touch, consist of devices which are independent,
145 nonnetworked voting systems in which each vote is recorded
146 and retained within each device's internal nonvolatile electronic
147 memory and contain an internal security, the absence of which
148 prevents substitution of any other device;

149 (L) For electronic voting systems that utilize a screen upon
150 which votes may be recorded by means of a stylus or by means
151 of touch, store each vote in no fewer than three separate,
152 independent, nonvolatile electronic memory components and
153 that each device contains comprehensive diagnostics to ensure
154 that failures do not go undetected;

155 (M) For electronic voting systems that utilize a screen upon
156 which votes may be recorded by means of a stylus or by means
157 of touch, contain a unique, embedded internal serial number for
158 auditing purposes for each device used to activate, retain and
159 record votes;

160 (N) For electronic voting systems that utilize a screen upon
161 which votes may be recorded by means of a stylus or by means
162 of touch, be constructed to record all preelection, election and
163 post-election activities, including all ballot images and system
164 anomalies, in each device's internal electronic memory and are
165 to be accessible in electronic or printed form;

166 (O) For electronic voting systems that utilize a screen upon
167 which votes may be recorded by means of a stylus or by means
168 of touch, be constructed with a battery backup system in each
169 device to, at a minimum, prevent the loss of any votes, as well
170 as all preelection, election and post-election activities, including

171 all ballot images and system anomalies, stored in the device's
172 internal electronic memory and to allow voting to continue for
173 two hours of uninterrupted operation in case of an electrical
174 power failure; and

175 (P) For electronic voting systems that utilize a screen upon
176 which votes may be recorded by means of a stylus or by means
177 of touch, be constructed to prevent the loss of any votes, as well
178 as all preelection, election and post-election activities, including
179 all ballot images and system anomalies, stored in each device's
180 internal electronic memory even in case of an electrical and
181 battery power failure.

**§3-4A-9a. Authorization for ballot-marking voting systems;
minimum requirements.**

1 (a) For purposes of this section, "ballot-marking accessible
2 voting system" means a device which allows voters, including
3 voters with disabilities, to mark an optical scanning or mark-
4 sensing voting system ballot, privately and independently. The
5 ballot-marking device is capable of marking voter selections on
6 an optically readable or mark-sensing ballot which shall be
7 subsequently read and tallied on state certified optically
8 readable or mark-sensing ballot tabulating and reporting
9 systems. Counties are hereby permitted to obtain and employ
10 ballot-marking accessible voting systems that are approved by
11 the State Election Commission.

12 (b) The ballot-marking accessible voting device shall be a
13 completely integrated ballot-marking device that is designed to
14 allow voters to either view ballot choices through a high
15 resolution visual display or listen to ballot choices with
16 headphones and then enter ballot selections directly through
17 specially designed, integrated accessibility keys.

18 (c) Ballot-marking accessible voting systems may be used
19 for the purpose of marking or scanning optically readable or
20 mark-sensing ballots cast in all general, special and primary
21 elections and shall meet the following specific requirements:

22 (1) The ballot-marking accessible voting system, system
23 firmware and programming software must be certified by an
24 independent testing authority, according to current federal
25 voting system standards and be approved by the State Elections
26 Commission prior to entering into any contract.

27 (2) The ballot-marking accessible voting system shall,
28 additionally:

29 (A) Alert the voter if the voter has made more ballot
30 selections than the law allows for an individual office or ballot
31 issue;

32 (B) Alert the voter if the voter has made fewer ballot
33 selections than the law allows for an individual office or ballot
34 issue;

35 (C) Allow the voter to independently review all ballot
36 choices and make any corrections, before the ballot is marked;

37 (D) Provide the voter with the opportunity to make a
38 write-in ballot choice, where allowed by state law;

39 (E) Allow voters with disabilities to mark their ballots, in
40 complete independence, and in conformity with both federal
41 and state law concerning mandatory accessibility for disabled
42 persons;

43 (F) Allow blind or visually impaired voters to vote in
44 complete privacy;

45 (G) Provide voters with an opportunity to change ballot
46 selections, or correct errors, before the ballot is marked for
47 voting, including the opportunity to correct the error through
48 the issuance of a replacement ballot if the voter was otherwise
49 unable to change the ballot or correct the error;

50 (H) Provide voters with the ability to view all ballot
51 selections through a high resolution visual display or to have all
52 ballot selections read to the voter through headphones;

53 (I) Ensure complete ballot privacy, while employing the
54 ballot-marking audio system and providing the voter with the
55 option to turn off the visual ballot display;

56 (J) Include a completely integrated voter input keypad,
57 using commonly accepted voter accessibility keys with Braille
58 markings;

59 (K) Include the ability for a voter to employ a sip/puff
60 device to enter ballot choices;

61 (L) Allow the voter to magnify all ballot choices and to
62 adjust both the volume of the audio feature and the speed of
63 ballot presentation;

64 (M) Allow the voter to employ his or her own headset as
65 well as the headset provided with the ballot-marking device
66 while being equipped with multiple output connections to
67 accommodate different headsets;

68 (N) Have multiple-language capability; and

69 (O) Allow the voter to verify that:

70 (i) An optical scan ballot inserted into the device at the start
71 of voting is blank; and

72 (ii) The voted optical scan ballot that is produced by the
73 device is voted as the voter intended.

74 (d) The Secretary of State is hereby directed to propose
75 rules and emergency rules for legislative approval in accor-
76 dance with the provisions of article three, chapter twenty-nine-a
77 of this code designed to ensure that any system employed by a
78 county under the provisions of this section is publicly tested
79 prior to use in election.

**§3-4A-9b. Authorization for precinct ballot-scanning device;
minimum requirements.**

1 (a) For purposes of this section, “precinct ballot-scanning
2 device” means a device used by the voter at the precinct on
3 election day or during early voting for the purpose of scanning
4 the voter’s ballot after the ballot has been voted but prior to
5 depositing the ballot into the ballot box.

6 (b) The precinct ballot-scanning device may be used for the
7 purpose of scanning optically readable ballots cast in all
8 primary, general and special elections.

9 (c) The precinct ballot-scanning device, firmware and
10 programming software must be certified by an independent
11 testing authority, according to current federal standards and be
12 approved by the State Election Commission. No election
13 official may enter into any contract to purchase, rent, lease or
14 otherwise acquire any precinct ballot-scanning device, firmware
15 or software not approved by the State Election Commission.

16 (d) The precinct ballot-scanning device shall additionally:

17 (1) Alert the voter if the voter has made more ballot
18 selections than the law allows for an individual office or ballot
19 issue;

20 (2) Alert the voter if the voter has made fewer ballot
21 selections than the law allows for an individual office or ballot
22 issue; and

23 (3) Allow voters an opportunity to change ballot selections,
24 or correct errors, including the opportunity to correct the error
25 through the issuance of a replacement ballot if the voter was
26 otherwise unable to change the ballot or correct the error.

27 (e) The precinct ballot-scanning device shall not be used for
28 tabulating election results.

29 (f) The Secretary of State is hereby directed to propose
30 rules and emergency rules for legislative approval in accor-
31 dance with the provisions of article three, chapter twenty-nine-a
32 of this code in accordance with the provisions of this section.

**§3-4A-28. Post-election custody and inspection of vote recording
devices; canvass and recounts.**

1 (a) The vote recording devices, the ballot labels, ballot
2 cards, program decks and standard validation test decks are to
3 remain sealed during the canvass of the returns of the election
4 except that the equipment may be opened for the canvass and
5 must be resealed immediately thereafter. During a seven day
6 period after the completion of the canvass, any candidate or the
7 local chair of a political party may be permitted to examine any
8 of the materials sealed: *Provided*, That a notice of the time and
9 place of the examination is to be posted at the central counting
10 center before and on the hour of nine o'clock in the morning on
11 the day the examination is to occur, and all persons entitled to
12 be present at the central counting center may, at their option, be
13 present. Upon completion of the canvass and after a seven-day
14 period has expired, the vote recording devices, the ballot labels,
15 ballot cards, program decks and standard validation test decks
16 are to be sealed for one year: *Provided, however*, That the vote

17 recording devices and all tabulating equipment may be released
18 for use in any other lawful election to be held more than ten
19 days after the canvass is completed, and any of the electronic
20 voting equipment herein discussed may be released for inspec-
21 tion or review by a request of a circuit court or the Supreme
22 Court of Appeals.

23 (b) In canvassing the returns of the election, the board of
24 canvassers shall examine all of the vote recording devices, the
25 ballot labels, ballot cards, the automatic tabulating equipment
26 used in the election and those voter verified paper ballots
27 generated by direct recording electronic vote machines as
28 required by subsection (d) of this section, and shall determine
29 the number of votes cast for each candidate and for and against
30 each question and by this examination shall procure the correct
31 returns and ascertain the true results of the election. Any
32 candidate or his or her party representative may be present at
33 the examination.

34 (c) If any candidate demands a recount of the votes cast at
35 an election, the voter verified paper ballot shall be used for
36 requested recounts, according to the same rules as are utilized
37 in the original vote count pursuant to section twenty-seven of
38 this article.

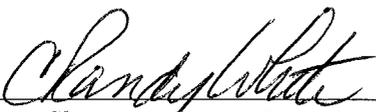
39 (d) During the canvass and any requested recount, at least
40 five percent of the precincts are to be chosen at random and the
41 voter verified paper ballots are to be counted manually.
42 Whenever the vote total obtained from the manual count of the
43 voter verified paper ballots for all votes cast in a randomly
44 selected precinct:

45 (1) Differs by more than one percent from the automated
46 vote tabulation equipment; or

47 (2) Results in a different prevailing candidate or outcome,
48 either passage or defeat, of one or more ballot issues such

49 precincts for any contest or ballot issue; then the discrepancies
50 shall immediately be disclosed to the public and all of the
51 voter-verified paper ballots shall be manually counted. In every
52 case that there is a difference between the vote totals obtained
53 from the automated vote tabulation equipment and the corre-
54 sponding vote totals obtained from the manual count of the
55 voter-verified paper ballots, the manual count of the
56 voter-verified paper ballots shall be the vote of record.

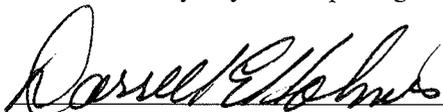
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

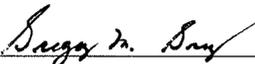

Chairman Senate Committee

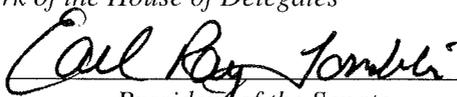

Chairman House Committee

Originating in the House.

In 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 is approved this the 4th
day of May, 2005.


Governor

PRESENTED TO THE
GOVERNOR

APR 22 2005

Time 2:05 PM