WEST VIRGINIA LEGISLATURE
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REGULAR SESSION, 2007

ENROLLED
Committee Substitute for
Senate Bill No. 610

(Senators Kessler and Hunter, original sponsors)

[Passed March 6, 2007; in effect ninety days from passage.]
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COMMITTEE SUBSTITUTE

FOR

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AN ACT to amend and reenact §3-4A-1, §3-4A-8, §3-4A-23, §3-4A-26 and §3-4A-28 of the Code of West Virginia, 1931, as amended, all relating to electronic voting systems generally; requiring each county to develop a policy for securing electronic voting equipment; requiring vendor of electronic voting equipment to provide an annual report of any difficulties with electronic voting machines; restricting certain recording and electronic devices from the voting booth; providing for additional testing of electronic voting
machines in certain circumstances; providing for testing a set of preaudited group of ballots; and allowing qualified individuals to demand recount.

Be it enacted by the Legislature of West Virginia:

That §3-4A-1, §3-4A-8, §3-4A-23, §3-4A-26 and §3-4A-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEM.

§3-4A-1. Use of electronic voting systems authorized.

(a) Electronic voting systems may be used for the purpose of registering or recording and computing votes cast in general, special and primary elections: Provided, That the use of the electronic voting systems shall be governed by the terms, conditions, restrictions and limitations imposed by this article.

(b) Each county which is authorized to use electronic voting systems in any statewide election shall establish a written policy for securing the electronic voting equipment. The policy shall outline how the equipment is secured from tampering and under what circumstances county personnel are authorized to have access. The clerk of the county commission shall submit a copy of the policy to the Secretary of State by the first day of February in each even-numbered year. The clerk shall also submit a copy of any change to the policy within thirty days after its adoption.

§3-4A-8. Approval of electronic voting system by State Election Commission; expenses; compensation of persons examining system.
(a) Any person or corporation owning or interested in any electronic voting system may apply to the State Election Commission so that the system may be examined and a report be made on its accuracy, efficiency, capacity and safety. Upon the written application of any vendor tendered to the Secretary of State or to any clerks in his or her office in charge of receiving filings for any purpose, the Secretary of State shall fix a date, time and place, not more than thirty days after the receipt of the application, for a meeting of the State Election Commission for mutual consideration of the application. The Secretary of State shall mail notice of the hearing by certified mail to each member of the commission.

(b) The State Election Commission shall appoint two qualified computer experts who are not members of the same political party to examine the system and make full reports on the system to the commission within thirty days from the date of the application. They shall state in the report whether the examined system complies with the requirements of this article and can be safely used by voters at elections under the conditions prescribed in this article. If the report is in the affirmative on that question, the commission may approve the system and adopt a system of its make and design for use at elections as provided in this article: Provided, That under no circumstances may a system be approved that is not capable of accurately tabulating returns based upon all possible combinations of voting patterns including, but not limited to, crossover voting and in accordance with section five, article six of this chapter. The vendor of the approved system shall provide the State Election Commission with a report, due on the first day of January of each even-numbered
year, that outlines any problem that has been
experienced with the equipment by any jurisdiction in
the state or in any jurisdiction outside the state that
uses the same or a similar version of the equipment that
has been certified for use in this state.

(c) No electronic voting system may be used at any
election unless it has been approved under this section
or its former provisions and by the appropriate agency
of the federal government whose purpose is to review
and issue a certificate of approval. Each of the two
qualified computer experts appointed by the
commission are entitled to reasonable compensation
and expenses in making the examination and report, to
be paid in advance of the examination required by
subsection (b) of this section by the person or
corporation applying for the examination. This sum
shall be the sole compensation to be received by any
expert for any work performed pursuant to this section.

§3-4A-23. Persons prohibited about voting booths; penalties.

Excepting election officials acting under authority of
sections nineteen, twenty, twenty-one and twenty-two
of this article in the conduct of the election, and
qualified persons assisting voters pursuant to section
twenty-two of this article, no person other than the
voter may be in, about or within five feet of the voting
booth during the time the voter is voting at any election.
While the voter is voting, no person may communicate
with the voter in any manner and the voter may not
communicate with any other person or persons. No
person may enter a voting booth with any recording or
electronic device in order to record or interfere with the
voting process. Any conduct or action of an election
official about or around the voting booth while the
voter is in the process of voting, except as expressly
provided in this article, is a violation of this section.
Any person violating the provisions of this section is
guilty of a misdemeanor and, upon conviction thereof,
shall be fined not more than one thousand dollars or be
sentenced to imprisonment in the county jail for a
period not more than twelve months or, in the discretion
of the court, shall be subject to both such fine and
imprisonment.

§3-4A-26. Test of automatic tabulating equipment.

(a) One week prior to the start of the count of the
evotes recorded on ballots or screens, the clerk of the
county commission shall have the automatic tabulating
equipment tested to ascertain that it will accurately
count the votes cast for all offices and on all measures.
This test shall consist of a test of the entire voting
system, including removal of data from a vote-recording
device and its transferral to automatic tabulating
equipment. The county commission shall give public
notice of the time and place of the test not less than
forty-eight hours nor more than two weeks prior to the
test by publication of a notice as a Class I-0 legal
advertisement in the county involved, in compliance
with the provisions of article three, chapter fifty-nine of
this code.

(b) (1) Vote-recording devices used and tested for early
voting may also be used on election day upon
compliance with all of the following requirements:

(A) Following the close of early voting, the personal
electronic ballot and the programable memory chip
shall be removed and replaced with another personal
electronic ballot and programable memory chip
prepared for, but unused during, the current election
period;

(B) The printed paper trail used during the early
voting period shall be removed and replaced with a new
paper trail; and

(C) The vote-recording device shall be retested prior
to being used on election day.

(2) Any personal electronic ballot programable
memory chip and printed paper trail removed from a
vote-recording device used for early voting shall be
securely stored by the county clerk until such time as it
is used to tally the votes on election day in accordance
with section twenty-seven of this article.

c (1) A test performed pursuant to this section shall
be open to representatives of the political parties,
candidates, the press and the public. It is to be
conducted by processing a set of preaudited ballots
marked to record a predetermined number of valid
votes for each candidate or each measure. For each
multicandidate office, the test shall include one or more
ballots which have cross-over votes in order to test the
ability of the automatic tabulating equipment to record
those votes in accordance with the provisions of this
article and any other applicable law. For each office,
the test shall include one or more ballots which have
votes in excess of the number allowed by law in order to
test the ability of the automatic tabulating equipment
to reject votes. If, in the process of any of the test
counts, any error is detected, the cause of the error is to
be ascertained and corrective action promptly taken. After the completion of the corrective action, the test counts are to continue, including a retesting of those precincts previously test counted. Prior to the continuation of the testing, the county commission shall certify in writing, signed by each commissioner, the nature of the error, its cause and the type of corrective action taken. The certification shall be recorded in the office of the clerk of the county commission in the record book. Immediately after conclusion of this completed test, a certified duplicate copy of the test results shall be sent by certified mail to the offices of the State Election Commission, where it is to be preserved and secured for one year and made available for comparison or analysis by order of a circuit court or the Supreme Court of Appeals.

(2) The tabulating equipment to be used in the election shall be immediately certified by the county commission to be free from error as determined by the test. All testing material shall be placed with the certification in a sealed container and kept under individual multiple locks with individual keys for each lock. The number of locks and keys shall be the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his or her possession. The sealed container shall be opened to conduct the test required immediately before the start of the official count.

(3) The test shall be repeated immediately before the start of the official count and at the conclusion of the official count before the count is approved as errorless and before the election returns are approved as official.
(4) All results of all of the tests are to be immediately certified by the county commission, filed in the office of the clerk of the county commission and immediately recorded in the record book. On completion of the count, the test materials and test ballots are to be sealed, except for purposes of the canvass as provided in section twenty-eight of this article, and retained and kept under individual multiple locks and individual keys for each lock. The number of locks and keys shall be the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his or her possession.

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

(a) The vote-recording devices, tabulating programs and standard validation test ballots are to remain sealed during the canvass of the returns of the election, except that the equipment may be opened for the canvass and must be resealed immediately thereafter. During the seven-day period after the completion of the canvass, any candidate or the local chair of a political party may be permitted to examine any of the sealed materials: Provided, That a notice of the time and place of the examination shall be posted at the central counting center before and on the hour of nine o'clock in the morning on the day the examination is to occur, and all persons entitled to be present at the central counting center may, at their option, be present. Upon completion of the canvass and after the seven-day period has expired, the vote-recording devices, test results and standard validation test ballots are to be sealed for one year: Provided, however, That the vote-
recording devices and all tabulating equipment may be
released for use in any other lawful election to be held
more than ten days after the canvass is completed and
any of the electronic voting equipment discussed in this
section may be released for inspection or review by a
request of a circuit court or the Supreme Court of
Appeals.

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

(c) If any qualified individual demands a recount of
the votes cast at an election, the voter-verified paper
ballot shall be used according to the same rules that are
used in the original vote count pursuant to section
twenty-seven of this article. For purposes of this
subsection, "qualified individual" means a person who
is a candidate for office on the ballot or a voter affected
by an issue, other than an individual's candidacy, on the
ballot.

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

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

(2) Results in a different prevailing candidate or outcome, either passage or defeat, of one or more ballot issues in the randomly selected precincts for any contest or ballot issue, then the discrepancies shall immediately be disclosed to the public and all of the voter-verified paper ballots shall be manually counted. In every case where there is a difference between the vote totals obtained from the automated vote tabulation equipment and the corresponding vote totals obtained from the manual count of the voter-verified paper ballots, the manual count of the voter-verified paper ballots is the vote of record.
11 [Enr. Com. Sub. for S. B. No. 610]

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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this
the Day of 2007.

Governor