WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

COMMITTEE SUBSTITUTE
FOR
ENROLLED
Senate Bill No. 619

(Senators Kessler, Edgell, Minard
and Hunter, original sponsors)

[Passed March 7, 2007; in effect ninety days from passage.]
AN ACT to amend and reenact §3-1-34 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-4A-16 and §3-4A-30 of said code, all relating to election day procedures and preparation; providing for handicapped individuals to vote on election day; providing that clerks must assure voter privacy by placement of voting devices and/or booths; and providing for sufficient space and notice of precinct consolidation.
Be it enacted by the Legislature of West Virginia:

That §3-1-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-4A-16 and §3-4A-30 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.

(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that precinct, he or she shall sign his or her name in the space marked “signature of voter” on the pollbook provided for the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other, and the name of the poll clerk affixing the voter’s mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she signs his or her name on the pollbook or his or her signature is affixed thereon.

(b) The clerk of the county commission is authorized, upon verification that the precinct at which a handicapped person is registered to vote is not handicap accessible, to transfer that person’s registration to the nearest polling place in the county which is handicap accessible. A request by a handicapped person for a transfer of registration must be received by the county clerk no later than thirty days prior to the date of the
3 [Enr. Com. Sub. for S. B. No. 619]

25 election. Any handicapped person who has not made a
26 request for a transfer of registration at least thirty days
27 prior to the date of the election may vote a provisional
28 ballot at a handicap accessible polling place in the
29 county of his or her registration. If during the canvass
30 the county commission determines that the person had
31 been registered in a precinct that is not handicap
32 accessible, the voted ballot, if otherwise valid, shall be
33 counted. The handicapped person may vote in the
34 precinct to which the registration was transferred only
35 as long as the disability exists or the precinct from
36 which the handicapped person was transferred remains
37 inaccessible to the handicapped. To ensure
38 confidentiality of the transferred ballot, the county
39 clerk processing the ballot shall provide the voter with
40 an unmarked envelope and an outer envelope
41 designated "provisional ballot/handicapped voter".
42 After validation of the ballot at the canvass, the outer
43 envelope shall be destroyed and the handicapped voter's
44 ballot shall be placed with other approved provisional
45 ballots prior to removal of the ballot from the unmarked
46 envelope.

47 (c) When the voter's signature is properly on the
48 pollbook, the two poll clerks shall sign their names in
49 the places indicated on the back of the official ballot
50 and deliver the ballot to the voter to be voted by him or
51 her without leaving the election room. If he or she
52 returns the ballot spoiled to the clerks, they shall
53 immediately mark the ballot "spoiled" and it shall be
54 preserved and placed in a spoiled ballot envelope
55 together with other spoiled ballots to be delivered to the
56 board of canvassers and deliver to the voter another
57 official ballot, signed by the clerks on the reverse side.
58 The voter shall thereupon retire alone to the booth or
Enr. Com. Sub. for S. B. No. 619] 4

compartment prepared within the election room for voting purposes and there prepare his or her ballot. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter.

(d) It is the duty of a poll clerk, in the presence of the other poll clerk, to indicate by a check mark inserted in the appropriate place on the registration record of each voter the fact that the voter voted in the election. In primary elections the clerk shall also insert thereon a distinguishing initial or initials of the political party for whose candidates the voter voted. If a person is challenged at the polls, the challenge shall be indicated by the poll clerks on the registration record, together with the name of the challenger. The subsequent removal of the challenge shall be recorded on the registration record by the clerk of the county commission.

(e) (1) No voter may receive any assistance in voting unless, by reason of blindness, disability, advanced age or inability to read and write, that voter is unable to vote without assistance. Any voter qualified to receive assistance in voting under the provisions of this section may:

(A) Declare his or her choice of candidates to an election commissioner of each political party who, in the presence of the voter and in the presence of each other, shall prepare the ballot for voting in the manner hereinbefore provided and, on request, shall read to the voter the names of the candidates selected on the ballot;

(B) Require the election commissioners to indicate to
him or her the relative position of the names of the candidates on the ballot, whereupon the voter shall retire to one of the booths or compartments to prepare his or her ballot in the manner hereinbefore provided;

(C) Be assisted by any person of the voter's choice, other than the voter's present or former employer or agent of that employer, the officer or agent of a labor union of which the voter is a past or present member or a candidate on the ballot or an official write-in candidate; or

(D) If he or she is handicapped, vote from an automobile outside the polling place or precinct by the absentee balloting method provided in subsection (e), section five, article three of this chapter in the presence of an election commissioner of each political party if all of the following conditions are met:

(i) The polling place is not handicap accessible; and

(ii) No voters are voting or waiting to vote inside the polling place.

The voted ballot shall then be returned to the precinct officials and secured in a sealed envelope to be returned to the clerk of the county commission with all other election materials. The ballot shall then be tabulated using the appropriate method provided in section eight of this chapter as it relates to the specific voting system in use.

(2) Any voter who requests assistance in voting but who is believed not to be qualified for assistance under the provisions of this section shall nevertheless be

119 permitted to vote a provisional ballot with the
120 assistance of any person herein authorized to render
121 assistance.

122 (3) Any one or more of the election commissioners or
123 poll clerks in the precinct may challenge the ballot on
124 the ground that the voter thereof received assistance in
125 voting it when in his, her or their opinion the person
126 who received assistance in voting is not so illiterate,
127 blind, disabled or of such advanced age as to have been
128 unable to vote without assistance. The election
129 commissioner or poll clerk or commissioners or poll
130 clerks making the challenge shall enter the challenge
131 and reason therefor on the form and in the manner
132 prescribed or authorized by article three of this chapter.

133 (4) An election commissioner or other person who
134 assists a voter in voting:

135 (A) May not in any manner request or seek to persuade
136 or induce the voter to vote any particular ticket or for
137 any particular candidate or for or against any public
138 question and must not keep or make any memorandum
139 or entry of anything occurring within the voting booth
140 or compartment and must not, directly or indirectly,
141 reveal to any person the name of any candidate voted
142 for by the voter or which ticket he or she had voted or
143 how he or she had voted on any public question or
144 anything occurring within the voting booth or
145 compartment or voting machine booth except when
146 required pursuant to law to give testimony as to the
147 matter in a judicial proceeding; and

148 (B) Shall sign a written oath or affirmation before
149 assisting the voter on a form prescribed by the
Secretary of State stating that he or she will not
override the actual preference of the voter being
assisted, attempt to influence the voter's choice or
mislead the voter into voting for someone other than the
candidate of voter's choice. The person assisting the
voter shall also swear or affirm that he or she believes
that the voter is voting free of intimidation or
manipulation: Provided, That no person providing
assistance to a voter is required to sign an oath or
affirmation where the reason for requesting assistance
is the voter's inability to vote without assistance
because of blindness as defined in section three, article
fifteen, chapter five of this code and the inability to vote
without assistance because of blindness is certified in
writing by a physician of the voter's choice and is on file
in the office of the clerk of the county commission.

(5) In accordance with instructions issued by the
Secretary of State, the clerk of the county commission
shall provide a form entitled "list of assisted voters",
the form of which list shall likewise be prescribed by
the Secretary of State. The commissioners shall enter
the name of each voter receiving assistance in voting the
ballot, together with the poll slip number of that voter
and the signature of the person or the commissioner
from each party who assisted the voter. If no voter has
been assisted in voting, the commissioners shall likewise
make and subscribe to an oath of that fact on the list.

(f) After preparing the ballot, the voter shall fold the
ballot so that the face is not exposed and so that the
names of the poll clerks thereon are seen. The voter
shall announce his or her name and present his or her
ballot to one of the commissioners who shall hand the
same to another commissioner, of a different political
party, who shall deposit it in the ballot box if the ballot is the official one and properly signed. The commissioner of election may inspect every ballot before it is deposited in the ballot box to ascertain whether it is single, but without unfolding or unrolling it so as to disclose its content. When the voter has voted, he or she shall retire immediately from the election room and beyond the sixty-foot limit thereof and may not return except by permission of the commissioners.

(g) Following the election, the oaths or affirmations required by this section from those assisting voters, together with the "list of assisted voters", shall be returned by the election commissioners to the clerk of the county commission along with the election supplies, records and returns. The clerk of the county commission shall make the oaths, affirmations and list available for public inspection and shall preserve them for a period of twenty-two months or until disposition is authorized or directed by the Secretary of State or court of record: Provided, That the clerk may use these records to update the voter registration records in accordance with subsection (d), section eighteen, article two of this chapter.

(h) Any person making an oath or affirmation required under the provisions of this section who knowingly swears falsely or any person who counsels, advises, aids or abets another in the commission of false swearing under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail for a period of not more than one year, or both fined and confined.
(i) Any election commissioner or poll clerk who authorizes or provides unchallenged assistance to a voter when the voter is known to the election commissioner or poll clerk not to require assistance in voting is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in a state correctional facility for a period of not less than one year nor more than five years, or both fined and imprisoned.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-16. Delivery of vote-recording devices; time, arrangement for voting.

The clerk of the county commission shall deliver or cause to be delivered each vote-recording device, where applicable, and the package of ballots to the polling place where they are to be employed. The delivery is to be made not less than one hour prior to the opening of the polls and is to be made in the presence of the precinct election commissioners. At the time of the delivery of the vote recording device, where applicable, and the ballots, the device is to be sealed to prevent its use prior to the opening of the polls and any tampering with the ballot labels; and the ballots are to be packaged and sealed to prevent any tampering with the ballots. Immediately prior to the opening of the polls on election day, the sealed packages of ballots are to be opened, where applicable, and the seal of the vote-recording device is to be broken in the presence of the precinct election commissioners, who shall certify in writing signed by them to the clerk of the county commission, that the devices, where applicable, and the ballots have been delivered in their presence, that the devices and packages of ballots were found to be sealed
upon delivery, and that the seals have been broken and
the devices opened in their presence, as may be
appropriate. The election commissioners shall then
cause the vote-recording device and booth to be
arranged so that the front of the vote-recording device
will not be visible, when the vote-recording device is
being operated, to any person other than the voter. The
poll clerks shall ensure that the vote-recording device is
placed in a location that maintains voter privacy
through the entire period of voting.

§3-4A-30. Adjustments in voting precincts where electronic
voting system used.

(a) The provisions of section five, article one of this
chapter, relating to the number of registered voters in
each precinct, shall apply to and control in precincts in
counties in which electronic voting systems have been
adopted, except that the maximum number of registered
voters shall be one thousand five hundred per precinct.
The county commissions of such counties, subject to
other provisions of this chapter with respect to the
altering or changing of the boundaries of voting
precincts, may change the boundaries of precincts or
consolidate precincts as practicable, to achieve the
maximum advantage from the use of electronic voting
systems.

(b) The county commission may, in the urban centers
of any county adopting an electronic voting system,
designate a voting place outside the boundaries of a
precinct, provided such voting place is in a public
building of sufficient size and in an adjoining precinct.
In such event, more than one precinct may vote in any
such public building. Upon combination of adjoining
precincts pursuant to this subsection, the county commission shall: (1) Publish its order combining the precincts in the same manner as an order of consolidation pursuant to section seven, article one of this chapter; and (2) cause its order to be published with each sample ballot publication required by this chapter.

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

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within bill is approved this 20th Day of December, 2007.

[Signature]
Governor