

SB 610 S

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2007**

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**ENROLLED**  
*Committee Substitute for*  
**Senate Bill No. 610**

(SENATORS KESSLER AND HUNTER, *original sponsors*)

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

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COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 610**

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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

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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.**

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

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

**§3-4A-8. Approval of electronic voting system by State  
Election Commission; expenses; compensation  
of persons examining system.**

1 (a) Any person or corporation owning or interested in  
2 any electronic voting system may apply to the State  
3 Election Commission so that the system may be  
4 examined and a report be made on its accuracy,  
5 efficiency, capacity and safety. Upon the written  
6 application of any vendor tendered to the Secretary of  
7 State or to any clerks in his or her office in charge of  
8 receiving filings for any purpose, the Secretary of State  
9 shall fix a date, time and place, not more than thirty  
10 days after the receipt of the application, for a meeting  
11 of the State Election Commission for mutual  
12 consideration of the application. The Secretary of State  
13 shall mail notice of the hearing by certified mail to each  
14 member of the commission.

15 (b) The State Election Commission shall appoint two  
16 qualified computer experts who are not members of the  
17 same political party to examine the system and make  
18 full reports on the system to the commission within  
19 thirty days from the date of the application. They shall  
20 state in the report whether the examined system  
21 complies with the requirements of this article and can  
22 be safely used by voters at elections under the  
23 conditions prescribed in this article. If the report is in  
24 the affirmative on that question, the commission may  
25 approve the system and adopt a system of its make and  
26 design for use at elections as provided in this article:  
27 *Provided*, That under no circumstances may a system be  
28 approved that is not capable of accurately tabulating  
29 returns based upon all possible combinations of voting  
30 patterns including, but not limited to, crossover voting  
31 and in accordance with section five, article six of this  
32 chapter. The vendor of the approved system shall  
33 provide the State Election Commission with a report,  
34 due on the first day of January of each even-numbered

35 year, that outlines any problem that has been  
36 experienced with the equipment by any jurisdiction in  
37 the state or in any jurisdiction outside the state that  
38 uses the same or a similar version of the equipment that  
39 has been certified for use in this state.

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

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

1 Excepting election officials acting under authority of  
2 sections nineteen, twenty, twenty-one and twenty-two  
3 of this article in the conduct of the election, and  
4 qualified persons assisting voters pursuant to section  
5 twenty-two of this article, no person other than the  
6 voter may be in, about or within five feet of the voting  
7 booth during the time the voter is voting at any election.  
8 While the voter is voting, no person may communicate  
9 with the voter in any manner and the voter may not  
10 communicate with any other person or persons. No  
11 person may enter a voting booth with any recording or  
12 electronic device in order to record or interfere with the  
13 voting process. Any conduct or action of an election

14 official about or around the voting booth while the  
15 voter is in the process of voting, except as expressly  
16 provided in this article, is a violation of this section.  
17 Any person violating the provisions of this section is  
18 guilty of a misdemeanor and, upon conviction thereof,  
19 shall be fined not more than one thousand dollars or be  
20 sentenced to imprisonment in the county jail for a  
21 period not more than twelve months or, in the discretion  
22 of the court, shall be subject to both such fine and  
23 imprisonment.

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

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

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

19 (A) Following the close of early voting, the personal  
20 electronic ballot and the programable memory chip

21 shall be removed and replaced with another personal  
22 electronic ballot and programable memory chip  
23 prepared for, but unused during, the current election  
24 period;

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

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

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

36 (c) (1) A test performed pursuant to this section shall  
37 be open to representatives of the political parties,  
38 candidates, the press and the public. It is to be  
39 conducted by processing a set of preaudited ballots  
40 marked to record a predetermined number of valid  
41 votes for each candidate or each measure. For each  
42 multicandidate office, the test shall include one or more  
43 ballots which have cross-over votes in order to test the  
44 ability of the automatic tabulating equipment to record  
45 those votes in accordance with the provisions of this  
46 article and any other applicable law. For each office,  
47 the test shall include one or more ballots which have  
48 votes in excess of the number allowed by law in order to  
49 test the ability of the automatic tabulating equipment  
50 to reject votes. If, in the process of any of the test  
51 counts, any error is detected, the cause of the error is to

52 be ascertained and corrective action promptly taken.  
53 After the completion of the corrective action, the test  
54 counts are to continue, including a retesting of those  
55 precincts previously test counted. Prior to the  
56 continuation of the testing, the county commission shall  
57 certify in writing, signed by each commissioner, the  
58 nature of the error, its cause and the type of corrective  
59 action taken. The certification shall be recorded in the  
60 office of the clerk of the county commission in the  
61 record book. Immediately after conclusion of this  
62 completed test, a certified duplicate copy of the test  
63 results shall be sent by certified mail to the offices of  
64 the State Election Commission, where it is to be  
65 preserved and secured for one year and made available  
66 for comparison or analysis by order of a circuit court or  
67 the Supreme Court of Appeals.

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

80 (3) The test shall be repeated immediately before the  
81 start of the official count and at the conclusion of the  
82 official count before the count is approved as errorless  
83 and before the election returns are approved as official.

84 (4) All results of all of the tests are to be immediately  
85 certified by the county commission, filed in the office of  
86 the clerk of the county commission and immediately  
87 recorded in the record book. On completion of the  
88 count, the test materials and test ballots are to be  
89 sealed, except for purposes of the canvass as provided  
90 in section twenty-eight of this article, and retained and  
91 kept under individual multiple locks and individual  
92 keys for each lock. The number of locks and keys shall  
93 be the same as the number of county commissioners  
94 together with the county clerk, with each commissioner  
95 and the county clerk having a single key in his or her  
96 possession.

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

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

19 recording devices and all tabulating equipment may be  
20 released for use in any other lawful election to be held  
21 more than ten days after the canvass is completed and  
22 any of the electronic voting equipment discussed in this  
23 section may be released for inspection or review by a  
24 request of a circuit court or the Supreme Court of  
25 Appeals.

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

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

47 (d) During the canvass and any requested recount, at  
48 least five percent of the precincts are to be chosen at  
49 random and the voter-verified paper ballots are to be  
50 counted manually. Whenever the vote total obtained

51 from the manual count of the voter-verified paper  
52 ballots for all votes cast in a randomly selected precinct:

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

55 (2) Results in a different prevailing candidate or  
56 outcome, either passage or defeat, of one or more ballot  
57 issues in the randomly selected precincts for any contest  
58 or ballot issue, then the discrepancies shall immediately  
59 be disclosed to the public and all of the voter-verified  
60 paper ballots shall be manually counted. In every case  
61 where there is a difference between the vote totals  
62 obtained from the automated vote tabulation equipment  
63 and the corresponding vote totals obtained from the  
64 manual count of the voter-verified paper ballots, the  
65 manual count of the voter-verified paper ballots is the  
66 vote of record.

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

*Chute*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Russell E. Skyles*  
.....  
Clerk of the Senate

*Ernest R. Saunders*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this  
the *28<sup>th</sup>* Day of *March* ....., 2007.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 20 2007

Time 4:05