

SB 507

FILED

2008 APR -1 AM 11:07

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

SECRETARY OF STATE

COMMITTEE SUBSTITUTE

FOR

ENROLLED

Senate Bill No. 507

(SENATORS KESSLER, HUNTER, PLYMALE,
WHITE AND MINARD, *original sponsors*)

[Passed March 5, 2008; in effect from passage.]

FILED

2008 APR -1 AM 11: 07

OFFICE OF THE
SECRETARY OF STATE



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 507

(SENATORS KESSLER, HUNTER, PLYMALE,
WHITE AND MINARD, *original sponsors*)

[Passed March 5, 2008; in effect from passage.]

AN ACT to amend and reenact §3-1-20, §3-1-22, §3-1-29, §3-1-34 and §3-1-41 of the Code of West Virginia, 1931, as amended, all relating to general provisions and definitions for elections; requiring cards of instructions to voters to include notice as to effect of voting provisional ballot and right to request location of correct precinct; requiring posting of cards of instruction at voting places; requiring board of ballot commissioners to provide election officials with a list of county precincts and voter registration records; eliminating provisions requiring election official trainees to be volunteers receiving credits for high school diploma and to be appointed by county commission or municipality where the election is held; clarifying that

prohibition against using counting board in special elections is discretionary with the county commission; requiring poll clerk to notify prospective voter of effect of voting provisional ballot and of correct precinct in which to vote; and updating language relating to signatures to reflect use of electronic poll books and other electronic devices.

Be it enacted by the Legislature of West Virginia:

That §3-1-20, §3-1-22, §3-1-29, §3-1-34 and §3-1-41 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-20. Cards of instructions to voters; sample ballots; posting.

1 (a) The board of ballot commissioners of each county
2 shall provide cards of general information which will
3 include:

4 (1) The date of the election and the hours during
5 which polling places will be open;

6 (2) Instruction for mail-in registrants and first-time
7 voters;

8 (3) Voters' rights; and

9 (4) Prohibitions against fraud and misrepresentation.

10 The board of ballot commissioners shall also provide
11 cards of instruction for voters in preparing their ballots
12 and casting a provisional ballot as prescribed by the
13 Secretary of State. The provisional ballot notice shall
14 include a notification to voters of their rights as a
15 provisional voter to inquire as to the correct precinct to
16 cast a ballot and notification that if a ballot is cast in
17 the incorrect precinct the ballot may not be counted at
18 the canvass for that election. The board of ballot

19 commissioners shall furnish a sufficient number of
20 cards to the commissioners of election at the same time
21 they deliver the ballots for the precinct. The
22 instructions regarding a provisional ballot shall be
23 posted in the precinct in a highly visible location for
24 voters to review.

25 (b) The commissioners of election shall post one
26 instruction card in each voting booth giving instructions
27 to the voters on how to prepare the ballots for deposit in
28 the ballot boxes and how to obtain a new ballot in place
29 of one accidentally spoiled.

30 (c) The commissioners of election shall post one or
31 more other cards of general information at places inside
32 and outside of the voting place where voters pass or
33 wait to vote. The commissioners shall also post the
34 official write-in candidates in the same locations inside
35 and outside of the voting place.

36 (d) The ballot commissioners shall have printed, on a
37 different color paper than the official ballot, two or
38 more copies of sample ballots for each voting place for
39 each election. Sample ballots shall be furnished and
40 posted with the cards of general information at each
41 voting place.

42 (e) During the period of early in-person voting, the
43 clerk of the county commission shall post the cards of
44 general information, a list of official write-in candidates
45 and sample ballots within the area where absentee
46 voting is conducted.

**§3-1-22. County court clerks to provide election supplies;
requirements for poll books and ballot boxes.**

1 The clerk of the county court of each county shall
2 provide poll books, a list of all precincts within the
3 county, tally sheets, ballot boxes, voting booths,
4 registration records and forms, strong and durable
5 envelopes upon which to make returns, blank forms for
6 certifying returns and whatever further supplies are
7 needed for holding the elections and making the returns

8 thereof. The poll books shall bear upon each page the
9 following heading: "Names of persons voting at precinct
10 No..... in the District of in the county of
11 on this (the) day of
12 in the year" Such poll books shall have columns
13 headed respectively: "Number of Voters," "Signature of
14 Voter" and "Challenge of Voter", and shall have under
15 the heading "Number of Voters" numbers in
16 consecutive order to the bottom of each page. Forms for
17 oaths of commissioners of election and poll clerks shall
18 be written or printed on the poll books. Each ballot box
19 shall be provided with two locks with different keys so
20 that the key for one lock will not open the other and
21 shall be so constructed as to be safely and securely
22 closed and locked, with an opening in the lid of the box
23 sufficient only for the passage of a single ballot.

**§3-1-29. Boards of election officials; definitions, composition
of boards, determination of number and type.**

1 (a) For the purpose of this article:

2 (1) The term "standard receiving board" means those
3 election officials charged with conducting the process of
4 voting within a precinct and consists of five persons,
5 including one team of poll clerks, one team of election
6 commissioners for the ballot box and one additional
7 election commissioner: *Provided*, That if a municipal
8 election is held at a time when there is no county or
9 state election, the standard receiving board is to consist
10 of four persons, including one team of poll clerks and
11 one team of election commissioners for the ballot box;

12 (2) The term "expanded receiving board" means a
13 standard receiving board as defined in subdivision (1) of
14 this subsection and one additional team of poll clerks;

15 (3) The term "counting board" means those election
16 officials charged with counting the ballots at the
17 precinct in counties using paper ballots and includes
18 one team of poll clerks, one team of election
19 commissioners and one additional commissioner;

20 (4) The term “team of poll clerks” or “team of election
21 commissioners” means two persons appointed by
22 opposite political parties to perform the specific
23 functions of the office: *Provided*, That no team of poll
24 clerks or team of election commissioners may consist of
25 two persons with the same registered political party
26 affiliation or two persons registered with no political
27 party affiliation; and

28 (5) The term “election official trainee” means an
29 individual who is sixteen or seventeen years of age who
30 meets the requirements of subdivisions (2), (3), (4), (5)
31 and (6), subsection (a), section twenty-eight of this
32 article.

33 (b) The composition of boards of election officials
34 shall be as follows:

35 (1) In any primary, general or special election other
36 than a presidential primary or presidential general
37 election, each election precinct is to have one standard
38 receiving board;

39 (2) In presidential primary and presidential general
40 elections, each election precinct is to have one receiving
41 board as follows:

42 (A) For precincts of less than five hundred registered
43 voters, one standard receiving board; and

44 (B) For precincts of more than five hundred registered
45 voters, one standard receiving board or, at the
46 discretion of the county commission, one expanded
47 receiving board.

48 (3) In any election conducted using paper ballots,
49 counting boards may be allowed or required as follows:

50 (A) For any state, county or municipal special election,
51 a counting board may be allowed at the discretion of the
52 county commission;

53 (B) In a statewide primary or general election, one

54 counting board is required for any precinct of more than
55 four hundred registered voters and one counting board
56 may be allowed, at the discretion of the county
57 commission, for any precinct of at least two hundred
58 but no more than four hundred registered voters; and

59 (C) In a municipal primary or general election, one
60 counting board may be allowed, at the discretion of the
61 municipal governing body, for any precinct of more
62 than two hundred registered voters.

63 (c) For each primary and general election in the
64 county, the county commission shall designate the
65 number and type of election boards for the various
66 precincts according to the provisions of this section. At
67 least eighty-four days before each primary and general
68 election the county commission shall notify the county
69 executive committees of the two major political parties
70 in writing of the number of nominations which may be
71 made for poll clerks and election commissioners.

72 (d) For each municipal election, the governing body of
73 the municipality shall perform the duties of the county
74 commission as provided in this section.

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

1 (a) Any person desiring to vote in an election shall,
2 upon entering the election room, clearly state his or her
3 name and residence to one of the poll clerks who shall
4 thereupon announce the same in a clear and distinct
5 tone of voice. If that person is found to be duly
6 registered as a voter at that precinct, he or she shall sign
7 his or her name in the designated location provided at
8 the precinct. If that person is physically or otherwise
9 unable to sign his or her name, his or her mark shall be
10 affixed by one of the poll clerks in the presence of the
11 other and the name of the poll clerk affixing the voter's
12 mark shall be indicated immediately under the
13 affixation. No ballot may be given to the person until
14 he or she signs his or her name on the designated
15 location or his or her signature is affixed thereon.

16 (b) The clerk of the county commission is authorized,
17 upon verification that the precinct at which a
18 handicapped person is registered to vote is not handicap
19 accessible, to transfer that person's registration to the
20 nearest polling place in the county which is handicap
21 accessible. A request by a handicapped person for a
22 transfer of registration must be received by the county
23 clerk no later than thirty days prior to the date of the
24 election. Any handicapped person who has not made a
25 request for a transfer of registration at least thirty days
26 prior to the date of the election may vote a provisional
27 ballot at a handicap accessible polling place in the
28 county of his or her registration. If during the canvass
29 the county commission determines that the person had
30 been registered in a precinct that is not handicap
31 accessible, the voted ballot, if otherwise valid, shall be
32 counted. The handicapped person may vote in the
33 precinct to which the registration was transferred only
34 as long as the disability exists or the precinct from
35 which the handicapped person was transferred remains
36 inaccessible to the handicapped. To ensure
37 confidentiality of the transferred ballot, the county
38 clerk processing the ballot shall provide the voter with
39 an unmarked envelope and an outer envelope
40 designated "provisional ballot/handicapped voter".
41 After validation of the ballot at the canvass, the outer
42 envelope shall be destroyed and the handicapped voter's
43 ballot shall be placed with other approved provisional
44 ballots prior to removal of the ballot from the unmarked
45 envelope.

46 (c) When the voter's signature is properly marked, the
47 two poll clerks shall sign their names in the places
48 indicated on the back of the official ballot and deliver
49 the ballot to the voter to be voted by him or her without
50 leaving the election room. If he or she returns the ballot
51 spoiled to the clerks, they shall immediately mark the
52 ballot "spoiled" and it shall be preserved and placed in
53 a spoiled ballot envelope together with other spoiled
54 ballots to be delivered to the board of canvassers and
55 deliver to the voter another official ballot, signed by the
56 clerks on the reverse side. The voter shall thereupon
57 retire alone to the booth or compartment prepared

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

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

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

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

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

93 (C) Be assisted by any person of the voter's choice,
94 other than the voter's present or former employer or
95 agent of that employer, the officer or agent of a labor

96 union of which the voter is a past or present member or
97 a candidate on the ballot or an official write-in
98 candidate; or

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

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

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

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

115 (3) Any voter who requests assistance in voting but
116 who is believed not to be qualified for assistance under
117 the provisions of this section shall nevertheless be
118 permitted to vote a provisional ballot with the
119 assistance of any person herein authorized to render
120 assistance.

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

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

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

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

165 (6) In accordance with instructions issued by the
166 Secretary of State, the clerk of the county commission
167 shall provide a form entitled "list of assisted voters",
168 the form of which list shall likewise be prescribed by
169 the Secretary of State. The commissioners shall enter
170 the name of each voter receiving assistance in voting the
171 ballot, together with the poll slip number of that voter

172 and the signature of the person or the commissioner
173 from each party who assisted the voter. If no voter has
174 been assisted in voting, the commissioners shall likewise
175 make and subscribe to an oath of that fact on the list.

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

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

206 (h) Any person making an oath or affirmation
207 required under the provisions of this section who
208 knowingly swears falsely or any person who counsels,
209 advises, aids or abets another in the commission of false
210 swearing under this section is guilty of a misdemeanor
211 and, upon conviction thereof, shall be fined not more

212 than one thousand dollars or confined in jail for a
213 period of not more than one year, or both fined and
214 confined.

215 (i) Any election commissioner or poll clerk who
216 authorizes or provides unchallenged assistance to a
217 voter when the voter is known to the election
218 commissioner or poll clerk not to require assistance in
219 voting is guilty of a felony and, upon conviction thereof,
220 shall be fined not more than five thousand dollars or
221 imprisoned in a state correctional facility for a period of
222 not less than one year nor more than five years, or both
223 fined and imprisoned.

**§3-1-41. Challenged and provisional voter procedures;
counting of provisional voters' ballots; ballots of
election officials.**

1 (a) It is the duty of the members of the receiving
2 board, jointly or severally, to challenge the right of any
3 person requesting a ballot to vote in any election:

4 (1) If the person's registration record is not available
5 at the time of the election;

6 (2) If the signature written by the person in the poll
7 book does not correspond with the signature purported
8 to be his or hers on the registration record;

9 (3) If the registration record of the person indicates
10 any other legal disqualification; or

11 (4) If any other valid challenge exists against the voter
12 pursuant to section ten, article three of this chapter.

13 (b) Any person challenged shall nevertheless be
14 permitted to vote in the election. He or she shall be
15 furnished an official ballot not endorsed by the poll
16 clerks. In lieu of the endorsements, the poll clerks shall
17 complete and sign an appropriate form indicating the
18 challenge, the reason thereof and the name or names of
19 the challengers. The form shall be securely attached to
20 the voter's ballot and deposited together with the ballot

21 in a separate box or envelope marked "provisional
22 ballots".

23 (c) At the time that an individual casts a provisional
24 ballot, the poll clerk shall give the individual written
25 information stating that an individual who casts a
26 provisional ballot will be able to ascertain under the
27 free access system established in this section whether
28 the vote was counted and, if the vote was not counted,
29 the reason that the vote was not counted.

30 (d) Before an individual casts a provisional ballot, the
31 poll clerk shall provide the individual written
32 instructions, supplied by the board of ballot
33 commissioners, stating that if the voter is casting a
34 ballot in the incorrect precinct, the ballot cast may not
35 be counted for that election: *Provided*, That if the voter
36 is found to be in the incorrect precinct, then the poll
37 worker shall attempt to ascertain the appropriate
38 precinct for the voter to cast a ballot and immediately
39 give the voter the information if ascertainable.

40 (e) Provisional ballots may not be counted by the
41 election officials. The county commission shall, on its
42 own motion, at the time of canvassing of the election
43 returns, sit in session to determine the validity of any
44 challenges according to the provisions of this chapter.
45 If the county commission determines that the challenges
46 are unfounded, each provisional ballot of each
47 challenged voter, if otherwise valid, shall be counted
48 and tallied together with the regular ballots cast in the
49 election. The county commission, as the board of
50 canvassers, shall protect the privacy of each provisional
51 ballot cast. The county commission shall disregard
52 technical errors, omissions or oversights if it can
53 reasonably be ascertained that the challenged voter was
54 entitled to vote.

55 (f) Any person duly appointed as an election
56 commissioner or clerk under the provisions of section
57 twenty-eight of this article who serves in that capacity
58 in a precinct other than the precinct in which the person
59 is legally entitled to vote may cast a provisional ballot

60 in the precinct in which the person is serving as a
61 commissioner or clerk. The ballot is not invalid for the
62 sole reason of having been cast in a precinct other than
63 the precinct in which the person is legally entitled to
64 vote. The county commission shall record the
65 provisional ballot on the voter's permanent registration
66 record: *Provided*, That the county commission may
67 count only the votes for the offices that the voter was
68 legally authorized to vote for in his or her own precinct.

69 (g) The Secretary of State shall establish a free access
70 system, which may include a toll-free telephone number
71 or an internet website, that may be accessed by any
72 individual who casts a provisional ballot to discover
73 whether his or her vote was counted and, if not, the
74 reason that the vote was not counted.

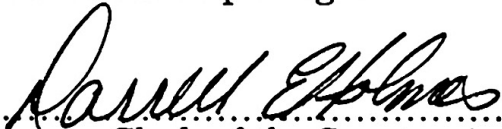
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee


.....
Chairman House Committee


Originated in the Senate.

In effect 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 18th Day of April, 2008.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 26 2008

Time 10:05 am