WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

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.]
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
Enr. Com. Sub. for S. B. No. 507] 2

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 shall provide cards of general information which will include:

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

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

8 (3) Voters’ rights; and

9 (4) Prohibitions against fraud and misrepresentation.

10 The board of ballot commissioners shall also provide cards of instruction for voters in preparing their ballots and casting a provisional ballot as prescribed by the Secretary of State. The provisional ballot notice shall include a notification to voters of their rights as a provisional voter to inquire as to the correct precinct to cast a ballot and notification that if a ballot is cast in the incorrect precinct the ballot may not be counted at the canvass for that election. The board of ballot
commissioners shall furnish a sufficient number of cards to the commissioners of election at the same time they deliver the ballots for the precinct. The instructions regarding a provisional ballot shall be posted in the precinct in a highly visible location for voters to review.

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

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

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

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

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

The clerk of the county court of each county shall provide poll books, a list of all precincts within the county, tally sheets, ballot boxes, voting booths, registration records and forms, strong and durable envelopes upon which to make returns, blank forms for certifying returns and whatever further supplies are needed for holding the elections and making the returns
thereof. The poll books shall bear upon each page the following heading: "Names of persons voting at precinct No...... in the District of .................... in the county of ................. on this (the) .................. day of ..................

in the year ........." Such poll books shall have columns headed respectively: "Number of Voters," "Signature of Voter" and "Challenge of Voter", and shall have under the heading "Number of Voters" numbers in consecutive order to the bottom of each page. Forms for oaths of commissioners of election and poll clerks shall be written or printed on the poll books. Each ballot box shall be provided with two locks with different keys so that the key for one lock will not open the other and shall be so constructed as to be safely and securely closed and locked, with an opening in the lid of the box 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.

(a) For the purpose of this article:

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

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

(3) The term "counting board" means those election officials charged with counting the ballots at the precinct in counties using paper ballots and includes one team of poll clerks, one team of election commissioners and one additional commissioner;
(4) The term "team of poll clerks" or "team of election commissioners" means two persons appointed by opposite political parties to perform the specific functions of the office: Provided, That no team of poll clerks or team of election commissioners may consist of two persons with the same registered political party affiliation or two persons registered with no political party affiliation; and

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

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

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

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

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

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

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

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

(B) In a statewide primary or general election, one
counting board is required for any precinct of more than four hundred registered voters and one counting board may be allowed, at the discretion of the county commission, for any precinct of at least two hundred but no more than four hundred registered voters; and

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

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

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

§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 designated location provided at 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 designated location 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 election. Any handicapped person who has not made a request for a transfer of registration at least thirty days prior to the date of the election may vote a provisional ballot at a handicap accessible polling place in the county of his or her registration. If during the canvass the county commission determines that the person had been registered in a precinct that is not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The handicapped person may vote in the precinct to which the registration was transferred only as long as the disability exists or the precinct from which the handicapped person was transferred remains inaccessible to the handicapped. To ensure confidentiality of the transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked envelope and an outer envelope designated "provisional ballot/handicapped voter". After validation of the ballot at the canvass, the outer envelope shall be destroyed and the handicapped voter's ballot shall be placed with other approved provisional ballots prior to removal of the ballot from the unmarked envelope.

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

(2) 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.

(3) 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 permitted to vote a provisional ballot with the assistance of any person herein authorized to render assistance.

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

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

(B) Shall sign a written oath or affirmation before 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.

(6) 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 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.

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

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

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

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

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

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

(b) Any person challenged shall nevertheless be
permitted to vote in the election. He or she shall be
furnished an official ballot not endorsed by the poll
clerks. In lieu of the endorsements, the poll clerks shall
complete and sign an appropriate form indicating the
challenge, the reason thereof and the name or names of
the challengers. The form shall be securely attached to
the voter's ballot and deposited together with the ballot
in a separate box or envelope marked “provisional ballots”.

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

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

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

(f) Any person duly appointed as an election commissioner or clerk under the provisions of section twenty-eight of this article who serves in that capacity in a precinct other than the precinct in which the person is legally entitled to vote may cast a provisional ballot
in the precinct in which the person is serving as a commissioner or clerk. The ballot is not invalid for the sole reason of having been cast in a precinct other than the precinct in which the person is legally entitled to vote. The county commission shall record the provisional ballot on the voter's permanent registration record: Provided, That the county commission may count only the votes for the offices that the voter was legally authorized to vote for in his or her own precinct.

(g) The Secretary of State shall establish a free access system, which may include a toll-free telephone number or an internet website, that may be accessed by any individual who casts a provisional ballot to discover whether his or her vote was counted and, if not, the 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 Day of , 2008.

Governor
PRESENTED TO THE
GOVERNOR

MAR 26 2008

Time 10:05 a.m.