WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2438

(By Delegates Miley, Hunt, Brown, Frazier, Barker, Moore, Hamilton and Ellem)

Passed March 9, 2011

In Effect Ninety Days From Passage
AN ACT to amend and reenact §3-1-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-4A-9 and §3-4A-20 of said code, all relating to independent voters; defining independent voters; reforming conflicts in voting procedures; and making technical corrections throughout.

Be it enacted by the Legislature of West Virginia:

That §3-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-4A-9 and §3-4A-20 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-2. Scope of chapter; definitions.
Unless restricted by the context, the provisions of this chapter apply to every general, primary and special election in which candidates are nominated or elected or in which voters pass upon any public question submitted to them, except that the provisions hereof shall be construed to be operative in municipal elections only in those instances in which they are made expressly so applicable.

 Unless the context clearly requires a different meaning, as herein used:

 "Voter" means any person who possesses the statutory and Constitutional qualifications for voting;

 "Independent" means a registered voter who declined to state a preference for party affiliation on their voter registration or who listed a party affiliation which is not qualified as a political party as defined in section eight, article one of this chapter.

 "Election" means the procedures whereby the voters of this state or any subdivision thereof elect persons to fill public offices, or elect members of a Constitutional convention, or vote on public questions;

 "Any election" or "all elections" means every general, primary or special election held in this state, or in any of its subdivisions, for the purpose of nominating or electing federal or state officers, or county, city, town or village officers of any subdivision now existing or hereafter created, or for the purpose of electing members of a Constitutional convention, or for voting upon any public question submitted to the people of the state or any of the aforesaid subdivisions;

 "Office" or "public office" means: (1) Any elective office provided for by the Constitution or laws of the United States
or of this state to which a salary or other compensation attaches; or (2) membership in a Constitutional convention.

"Candidate" means any person to be voted for at an election;

"Public question" means any issue or proposition, now or hereafter required by the governing body of this state or any of its subdivisions to be submitted to the voters of the state or subdivision for decision at elections;

The term "minor" as used in article four, section one of the State Constitution and as used in this chapter means a person who has not become eighteen years of age.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-9. Minimum requirements of electronic voting systems.

An electronic voting system of particular make and design may not be approved by the State Election Commission or be purchased, leased or used by any county commission unless it meets the following requirements:

(1) It secures or ensures the voter absolute secrecy in the act of voting or, at the voter's election, provides for open voting;

(2) It is constructed to ensure that, except in instances of open voting as provided in this section, the contents of a ballot may not be seen or known by anyone other than the voter who has voted or is voting;

(3) It permits each voter to vote at any election for all persons and offices for whom and which he or she is lawfully entitled to vote, whether or not the name of any person
appears on a ballot as a candidate; and it permits each voter
to vote for as many persons for an office as he or she is
lawfully entitled to vote for; and to vote for or against any
question upon which he or she is lawfully entitled to vote.
The automatic tabulating equipment used in electronic voting
systems is to reject choices recorded on any ballot if the
number of choices exceeds the number to which a voter is
entitled;

(4) It permits each voter to, write in, the names of persons
for whom he or she desires to vote whose names do not
appear upon the ballots or ballot labels;

(5) It permits each voter to change his or her vote for any
candidate and upon any question appearing upon the ballots
or ballot labels up to the time when his or her ballot is
deposited in the ballot box or his or her ballot is cast by
electronic means;

(6) It contains programming media containing
sequentially numbered program instructions and coded or
otherwise protected from tampering or substitution of the
media or program instructions of unauthorized persons and
capable of tabulating all votes cast in each election;

(7) It contains two standard validation test decks
approved as to form and testing capabilities by the State
Election Commission;

(8) It correctly records and counts accurately all votes
cast for the candidate and for and against each question
appearing upon the ballots;

(9) It permits each voter at any election, other than a
primary election, to vote a straight party ticket, as provided
in section five, article six of this chapter, by one mark or
punch;
(10) It permits a voter in a primary election to: (A) vote only for the candidates of the party for which the voter is legally permitted to vote; (B) vote for the candidates, if any, for nonpartisan nominations or election; and (C) vote on public questions; and precludes the voter from voting for any candidate seeking nomination by any other political party unless that political party has determined that the voter may participate in its primary election;

(11) It, where applicable, is provided with means for sealing or electronically securing the vote recording device to prevent its use and to prevent operation of the vote recording device for an election is begun and immediately after the polls are closed of after the operation of the vote recording device for an election is completed;

(12) It has the capacity to contain the names of candidates constituting the tickets of at least nine political parties and accommodates the wording of at least fifteen questions;

(13) (A) Direct recording electronic voting machines must generate a paper copy of each voter’s vote that will be automatically kept within a storage container, that is locked, closely attached to the direct recording electronic voting machine, and inaccessible to all but authorized voting officials, who will handle such storage containers and such paper copies contained therein in accordance with section nineteen of this article.

(B) The paper copy of the voter’s vote shall be generated at the time the voter is at the voting station using the direct recording electronic voting machine.

(C) The voter may examine the paper copy visually or through headphone readout, and may accept or reject the printed copy.
(D) The voter may not touch, handle or manipulate the
printed copy manually in any way.

(E) Once the printed copy of the voter’s votes is accepted
by the voter as correctly reflecting the voter’s intent, but not
before, it will automatically be stored for recounts or random
checks and the electronic vote will be cast within the
computer mechanism of the direct recording electronic voting
machine.

(F) Direct recording electronic voting machines with a
mandatory paper copy shall be approved by the Secretary of
State. The Secretary of State may promulgate rules and
emergency rules to implement or enforce this subsection
pursuant to the provisions of section five, article three,
chapter twenty-nine-a of this code.

(14) Where vote recording devices are used, they shall:

(A) Be durably constructed of material of good quality
and in a workmanlike manner and in a form which makes it
safely transportable;

(B) Bear a number that will identify it or distinguish it
from any other machine;

(C) Be constructed to ensure that a voter may easily learn
the method of operating it and may expeditiously cast his or
her vote for all candidates of his or her choice and upon any
public question;

(D) Be accompanied by a mechanically or electronically
operated instruction model which shows the arrangement of
ballot labels, party columns or rows, and questions;
(15) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch:

(A) Be constructed to provide for the direct electronic recording and tabulating of votes cast in a system specifically designed and engineered for the election application;

(B) Be constructed to prevent any voter from voting for more than the allowable number of candidates for any office, to include an audible or visual signal, or both, warning any voter who attempts to vote for more than the allowable number of candidates for any office or who attempts to cast his or her ballot prior to its completion and are constructed to include a visual or audible confirmation, or both, to the voter upon completion and casting of the ballot;

(C) Be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot;

(D) Be constructed to allow election commissioners to spoil a ballot where a voter fails to properly cast his or her ballot, has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot;

(E) Be constructed to allow election commissioners, poll clerks, or both, to designate, mark or otherwise record provisional ballots;

(F) Consist of devices which are independent, nonnetworked voting systems in which each vote is recorded and retained within each device's internal nonvolatile
134 electronic memory and contain an internal security, the
135 absence of which prevents substitution of any other device;
136
137 (G) Store each vote in no fewer than three separate,
138 independent, nonvolatile electronic memory components and
139 that each device contains comprehensive diagnostics to
140 ensure that failures do not go undetected;
141
142 (H) Contain a unique, embedded internal serial number
143 for auditing purposes for each device used to activate, retain
144 and record votes;
145
146 (I) Be constructed to record all preelection, election and
147 post-election activities, including all ballot images and
148 system anomalies, in each device's internal electronic
149 memory and are to be accessible in electronic or printed
150 form;
151
152 (J) Be constructed with a battery backup system in each
153 device to, at a minimum, prevent the loss of any votes, as
154 well as all preelection, election and post-election activities,
155 including all ballot images and system anomalies, stored in
156 the device's internal electronic memory and to allow voting
157 to continue for two hours of uninterrupted operation in case
158 of an electrical power failure; and
159
160 (K) Be constructed to prevent the loss of any votes, as
161 well as all preelection, election and post-election activities,
162 including all ballot images and system anomalies, stored in
163 each device's internal electronic memory even in case of an
164 electrical and battery power failure.

§3-4A-20. Non-affiliated voters in primary elections.

1 Unless voter not affiliated with a party, is permitted to
2 participate in the primary election of a political party, the
following provisions apply to voters, not affiliated with a party, in primary elections that include non-partisan candidates or public questions:

(1) Election officers shall provide a vote recording device, where applicable, or the appropriate ballot to be marked by an electronically sensible pen or ink, or by means of a stylus or by means of touch, or by other electronic means, so that voters not affiliated with a party may vote only those portions of the ballot relating to the nonpartisan candidates and the public questions submitted, or shall provide a ballot containing only provisions for voting for those candidates and upon those issues submitted common to the ballots provided to all voters regardless of political party affiliation, or both.

(2) In counties utilizing electronic voting systems in which votes are recorded by perforating, if vote recording devices are not available for the voters not affiliated with a party, provisions are to be made for sealing the partisan section or sections of the ballot or ballot labels on a vote recording device using temporary seals, thus permitting the voter not affiliated with a party to vote for the nonpartisan section or sections of the ballot or ballot labels.

(3) After a voter not affiliated with a party has voted, temporary seals may be removed and the device may then be used by partisan voters.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

[Signatures]

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

Acting President of the Senate

The within is disapproved this the 21st day of

[Signature]

Governor

The date 2011 MAR 21 PH 4:33
PRESENTED TO THE GOVERNOR

MAR 16 2011

Time 2:55 pm