ENROLLED

COMMITTEE SUBSTITUTE FOR

House Bill No. 3135

(By Delegate(s) Marcum, R. Phillips, Sponaugle, Manypenny, Longstreth and Skinner)

Passed April 12, 2013

In effect ninety days from passage.
AN ACT to amend and reenact §3-4A-2, §3-4A-8, §3-4A-23 and §3-4A-27 of the Code of West Virginia, 1931, as amended, all relating generally to electronic voting systems; updating and clarifying the definitions related to electronic voting systems; defining terms; adjusting requirements related to approval of electronic voting systems; increasing the time within which the State Election Commission must appoint certain computer experts; correcting internal code references; updating and clarifying language related to proceedings at the central counting center; and making other technical clarifications.
Be it enacted by the Legislature of West Virginia:

That §3-4A-2, §3-4A-8, §3-4A-23, and §3-4A-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-2. Definitions.

As used in this article, unless otherwise specified:

1. "Automatic tabulating equipment" means all apparatus necessary to electronically count votes recorded on ballots, tabulate the results and produce necessary reports;

2. "Ballot" means a logical or physical device that presents races, candidates and contests, and facilitates the capture of the voter's choices or intent;

3. "Central counting center" means a facility equipped with suitable and necessary automatic tabulating equipment, selected by the county commission, for the electronic counting of votes recorded on ballots;

4. "Electronic poll book" means an electronic device containing voter registration information for the purpose of facilitating voting at the precinct;

5. "Electronic voting system" is one or more integrated devices that utilize an electronic component for the following functions: Ballot presentation, vote capture, vote recording and tabulation;

6. "Standard validation test deck" means a group of ballots wherein all voting possibilities which can occur in an election are represented;

7. "Vote-recording device" means equipment that captures and records voter intent by marking a screen to record selections or by using electronically sensible ink to mark selections; and
(8) "Voter verified paper audit trail" means a physical
printout on which the voter's ballot choices, as registered by a
direct recording device, are recorded. This shall be visible to the
voter and shall be securely locked to avoid tampering.

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

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

(b) The State Election Commission shall appoint two
qualified computer experts who are not members of the same
political party to examine the system and make full reports on the
system to the commission within ninety days from the date the
State Election Commission approves the consideration of the
application. They shall state in the report whether the examined
system complies with the requirements of this article and the
federal agency responsible for certifying voting systems and can
be safely used by voters at elections under the conditions
prescribed in this article. If the report is in the affirmative on that
question, the commission may approve the system and adopt a
system of its make and design for use at elections as provided in
this article: Provided, That under no circumstances may a system
be approved that is not capable of accurately tabulating returns
based upon all possible combinations of voting patterns. The
vendor of the approved system shall provide the State Election Commission with a report, due on January 1, of each even-numbered year, that outlines any problem that has been experienced with the equipment by any jurisdiction in the state or in any jurisdiction outside the state that uses the same or a similar version of the equipment that has been certified for use in this state.

(c) No electronic voting system may be used at any election unless it has been approved under this section or its former provisions and by the appropriate agency of the federal government whose purpose is to review and issue a certificate of approval. Each of the two qualified computer experts appointed by the commission are entitled to reasonable compensation and expenses in making the examination and report, to be paid in advance of the examination required by subsection (b) of this section by the person or corporation applying for the examination. This sum shall be the sole compensation to be received by any expert for any work performed pursuant to this section. The State Election Commission shall determine the compensation at the time of approving the application for certification.

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

Excepting election officials acting under authority of sections nineteen, twenty and twenty-two of this article in the conduct of the election, and qualified persons assisting voters pursuant to section twenty-two of this article, no person other than the voter may be in, about or within five feet of the voting booth during the time the voter is voting at any election. While the voter is voting, no person may communicate with the voter in any manner and the voter may not communicate with any other person or persons. No person may enter a voting booth with any recording or electronic device in order to record or interfere with the voting process. Any conduct or action of an election official about or around the voting booth while the voter is in the process of voting, except as expressly provided in this article, is a violation of this section.
Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail not more than twelve months, or both fined and confined.

§3-4A-27. Proceedings at the central counting center.

(a) All proceedings at the central counting center are to be under the supervision of the clerk of the county commission and are to be conducted under circumstances which allow observation from a designated area by all persons entitled to be present. The proceedings shall take place in a room of sufficient size and satisfactory arrangement to permit observation. Those persons entitled to be present include all candidates whose names appear on the ballots being counted or if a candidate is absent, a representative of the candidate who presents a written authorization signed by the candidate for the purpose and two representatives of each political party on the ballot who are chosen by the county executive committee chairperson. A reasonable number of the general public is also freely admitted to the room. In the event all members of the general public desiring admission to the room cannot be admitted at one time, the county commission shall provide for a periodic and convenient rotation of admission to the room for observation, to the end that each member of the general public desiring admission, during the proceedings at the central counting center, is to be granted admission for reasonable periods of time for observation: Provided, That no person except those authorized for the purpose may touch any ballot or other official records and papers utilized in the election during observation.

(b) All persons who are engaged in processing and counting the ballots are to work in teams consisting of two persons of opposite political parties, and are to be deputized in writing and take an oath that they will faithfully perform their assigned duties. These deputies are to be issued an official badge or identification card which is assigned an identity control number and the
deputies are to prominently wear on his or her outer garments the issued badge or identification card. Upon completion of the deputies' duties, the badges or identification cards are to be returned to the county clerk.

(c) Ballots are to be handled and tabulated and the write-in votes tallied according to procedures established by the Secretary of State, subject to the following requirements:

(1) In systems using ballots marked with electronically sensible ink, ballots are to be removed from the ballot boxes and stacked for the tabulator which separates ballots containing marks for a write-in position. Immediately after tabulation, the valid write-in votes are to be tallied. No write-in vote may be counted for an office unless the voter has entered the name of an official write-in candidate for that office on the line provided; either by writing, affixing a sticker or placing an ink-stamped impression thereon;

(2) In systems using ballots in which votes are recorded upon screens with a stylus or by means of touch, the ballots are to be tabulated according to the processes of the system. Systems using ballots in which votes are recorded upon screens with a stylus or by means of touch are to tally write-in ballots simultaneously with the other ballots;

(3) When more than one person is to be elected to an office and the voter desires to cast write-in votes for more than one official write-in candidate for that office, the voter shall mark the location appropriate for the voting system, in the write-in location for that office. When there are multiple write-in votes for the same office and the combination of choices for candidates on the ballot and write-in choices for the same office exceed the number of candidates to be elected, the ballot is to be duplicated or hand counted, with all votes for that office rejected;

(4) Write-in votes for nomination for any office and write-in votes for any person other than an official write-in candidate are to be disregarded;
(5) When a voter casts a straight ticket vote and also marks the location for a write-in vote for an office, the straight ticket vote for that office is to be rejected, whether or not a vote can be counted for a write-in candidate; and

(6) Official write-in candidates are those who have filed a write-in candidate’s certificate of announcement and have been certified according to the provisions of section four-a, article six of this chapter.

(d) If any ballot is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy is to be made of the damaged ballot in the presence of representatives of each political party on the ballot and substituted for the damaged ballot. All duplicate ballots are to be clearly labeled “duplicate” and are to bear a serial number which is recorded on the damaged or defective ballot and on the replacement ballot.

(e) The returns printed by the automatic tabulating equipment at the central counting center, to which have been added write-in and other valid votes, are, when certified by the clerk of the county commission, to constitute the unofficial preliminary returns of the county. Upon completion of the count, the returns are to be open to the public by posting a summary of the returns as have been tabulated at the central counting center. Upon completion of the canvass, the returns are to be posted as tabulated precinct by precinct.

(f) If for any reason it becomes impracticable to count all or a part of the ballots with tabulating equipment, the county commission may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

(g) As soon as possible after the completion of the count, the clerk of the county commission shall have the vote recording devices properly boxed or securely covered and removed to a proper and secure place of storage.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within bill approved this the 30th day of Apr., 2013.

Governor