

**§ 3031.11. Instruction of voters**

(a) During the thirty days next preceding an election at which any electronic voting system is to be used, the county board of elections shall place on public exhibition, in such public places and in such quantity and at such times as it shall deem most suitable for the instruction and information of the voters of the county, those components of the electronic voting system which are used by the voter, containing a sample ballot designed for instructional use. Such components shall be under the charge and care of a person competent as custodian and instructor. No voting system component which is assigned for use in an election shall be used for such public exhibition and instruction after having been prepared and sealed for the election.

(b) At the polling place on the day of the election, each voter who desires shall be instructed, by means of appropriate diagrams and a model, in the operation of the voting device before he enters the voting booth. If any voter shall ask for further instructions concerning the manner of voting after entering the voting booth, any election officer may give him audible instructions without entering such booth, but no such election officer shall when giving such instructions in any manner request, suggest or seek to persuade or induce any such voter to vote any particular ticket or for any particular candidate or other person or for or against any particular question. 1937, June 3, P.L. 1333, art. XI-A, § 1111-A, added 1980, July 11, P.L. 600, No. 128, § 4, imd. effective.

**§ 3031.12. Election day procedures and the process of voting**

(a) In an election district which uses an electronic voting system in which votes are registered electronically, the following procedures will be applicable for the conduct of the election at the election district:

(1) At primary elections, the election officer in charge shall adjust the voting system before the voter records any vote so that the voter will only be able to register a vote for candidates on the ballot of the party in which he is registered and enrolled or for persons whose names are not on the official ballot, for candidates for nonpartisan nominations, if any, and for any questions upon which he is entitled to vote.

(2) At primary elections, the voter shall be able to vote for each candidate individually by the means provided. At all other elections, he may vote for each candidate individually, or he may vote a straight political party ticket in one operation by operating the straight political party mechanism of the political party or political body of his choice. He may also, after having operated the straight

party mechanism and before recording his vote, cancel the vote for any candidate of such political party or political body and may thereupon vote for a candidate of another party, or political body for the same office. The voter may also vote individually for or against a question submitted to the vote of the electors.

(3) A voter may, at any primary or other election, vote for any person or persons for any office for which his name does not appear upon the ballot label as a candidate, by writing the identification of the office and the name of such person in or upon the appropriate receptacle or device provided for that purpose. No write-in vote shall be cast on a voting device for any person for any office, whose name appears on the ballot label as a candidate for that office, and any ballot so cast shall be void and not counted.

(4) At any general election at which presidential electors are to be chosen, each elector shall be permitted to vote by one operation for all the presidential electors of a political party or political body. For each party or body nominating presidential electors, a ballot label shall be provided containing only the words "Presidential Electors," preceded by the names of the party or body and followed by the names of the candidates thereof for the office of President and Vice-President, and the corresponding counter or registering device shall register votes cast for said electors when thus voted for collectively. If any elector desires to vote a ticket for presidential electors made up of the names of persons nominated by different parties or bodies, or partially of names of persons so in nomination and partially of names of persons not in nomination by any party or body, he may write or deposit a paper ballot prepared by himself in the receptacle provided in or on the voting device for that purpose, or he may list their names on the write-in ballot or envelope provided for that purpose. The voting device shall be so constructed that it will not be possible for any one voter to vote a straight party ticket for presidential electors and at the same time to deposit a ballot for presidential electors in a receptacle as hereinabove provided. When the votes for presidential electors are counted, the votes appearing upon the counter or registering device corresponding to the ballot label containing the names of the candidates for President and Vice-President of any party or body shall be counted as votes for each of the candidates for presidential elector of such party or body, and thereupon all candidates for presidential elector shall be credited, in addition, with the votes cast for them upon the ballots deposited in the machine, as hereinabove provided.

(5) As soon as the elector has adjusted the voting device so that it will record his choices for the various candidates to be voted for,

and his answers to the various questions submitted, he shall operate the recording mechanism of the voting device and forthwith leave the voting booth.

(b) In an election district which uses an electronic voting system which utilizes paper ballots or ballot cards to register the votes, the following procedures will be applicable for the conduct of the election at the election district:

(1) The voter, after receiving his ballot from the district election officials, shall retire to one of the voting booths in which the voting devices are located.

(2) At primary elections, the voter shall vote for the candidates of his choice for nomination, according to the number of persons to be voted for by him, for each office by making a cross (×) or check (✓) mark or by making a punch or mark sense mark in the square opposite the name of the candidate, or he may so mark the write-in position provided on the ballot for the particular office and, in the space provided therefor on the ballot and/or ballot envelope, write the identification of the office in question and the name of any person not already printed on the ballot for that office, and such mark and written insertion shall count as a vote for that person for such office.

(3) At all other elections, the voter shall vote for the candidates of his choice for each office to be filled, according to the number of persons to be voted for by him for each office, by making a cross (×) or check (✓) mark or by making a punch or mark sense mark in the square opposite the name of the candidate, or he may so mark the write-in position provided on the ballot for the particular office and, in the space provided therefor on the ballot and/or ballot envelope, write the identification of the office in question and the name of any person not already printed on the ballot for that office, and such mark and written insertion shall count as a vote for that person for such office.

(4) If the voter desires to vote for every candidate of a political party or political body, except its candidates for offices as to which he votes for individual candidates in the manner hereinafter provided, he may make a cross (×) or check (✓) or punch or mark sense mark in the square opposite the name of the party or political body so marked, including its candidates for presidential electors, except for those offices as to which he has indicated a choice for individual candidates of the same or another party or political body, by making a cross (×) or check (✓) or punch or mark sense mark opposite their names in the manner hereinabove provided, as to which offices his ballot shall be counted only for the candidates which he has thus individually marked, notwithstanding

the fact that he made a mark in the party column, and even though in the case of an office for which more than one candidate is to be voted for, he has not individually marked for such office the full number of candidates for which he is entitled to vote. If he desires to vote for the entire group of presidential electors nominated by any party or political body, he may make a cross (×) or check (✓) or punch or mark sense mark in the appropriate space opposite the names of the candidates for President and Vice-President of such party or body. If he desires to vote a ticket for presidential electors made up of the names of persons nominated by different parties or political bodies, or partially of names of persons so in nomination and partially of names of persons not in nomination by any party or political body, or wholly of names of persons not in nomination by any party or political body, he shall insert the names of the candidates for presidential electors for whom he desires to vote in the blank spaces provided therefor on the write-in ballot under the title of the office "Presidential Electors". In case of a question submitted to the vote of the electors, he may make a cross (×) or check (✓) or punch or mark sense mark in the appropriate square opposite the answer which he desires to give.

(5) Any voter who spoils his ballot may return it and secure another. The word "spoiled" shall be written across the face of the ballot, and it shall be placed in the envelope marked "Spoiled Ballots".

(6) Following the completion of his vote, the voter shall leave the voting booth and return the ballot to the election officer by a means designed to insure its secrecy; upon removal of the stub of the ballot by the election officer, the voter shall insert the ballot into the district automatic tabulating equipment or, in the event district tabulation is not provided for by the voting system or such district tabulation equipment is inoperative for any reason, into a secure ballot box. No ballot card from which the stub has been detached shall be accepted by the election officer in charge of such equipment or ballot box, but it shall be marked "spoiled" and shall be placed in the envelope marked "Spoiled Ballots."

1937, June 3, P.L. 1333, art. XI-A, § 1112-A, added 1980, July 11, P.L. 600, No. 128, § 4, imd. effective.

### § 3031.13. Post election procedures

(a) As soon as the polls have been closed and the last elector has voted in districts having an electronic voting system which employs paper ballots or ballot cards, and district tabulation is provided for, the number of such ballots issued to electors (at primary elections, the number issued to the electors of each party), as shown by the

this Commonwealth by the secretary, the report of the secretary shall specify the capacity of the components of that system, the number of voters who may reasonably be accommodated by the voting devices and automatic tabulating equipment which comprise such system and the number of additional clerks, if any, that may be required based on the number of registered electors in any election district in which the voting system is to be used, such specifications being based upon the reports of the examiners and the secretary's own examination of the system. Any county which thereafter may adopt any such approved system shall provide the com-

ponents of such system in a number not less than that sufficient to accommodate the voters of that county or municipality in accordance with the minimum capacity standards as prescribed by the secretary."

; in subsec. (e), deleted "; nor any examiner appointed by him for the purposes prescribed by this section," following "Secretary of the Commonwealth"; and deleted subsec. (f), which read:

"(f) Each examiner appointed hereunder shall receive a compensation of one hundred and fifty dollars (\$150) for each type of electronic voting system examined by him."

### § 3031.6. Experimental use of electronic voting systems

(a) The county board of elections of any county may provide for experimental use at any primary or election in one or more election districts of said county, of an electronic voting system, and the use of such system shall be as valid for all purposes as if the electronic voting system had been adopted in accordance with the provisions of this act.

(b) The Secretary of the Commonwealth may approve the use of an experimental electronic voting system by the county board of elections of any county which complies with section 1306(a) for absentee voters as provided for in the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924) if the system allows the elector to mark his electronic ballot in secrecy as provided for paper absentee ballots pursuant to section 1306(a). The system shall be exempt from the requirements of sections 1107-A, 1302, 1303, 1304, 1305 and 1306.<sup>2</sup>

1937, June 3, P.L. 1353, art. XI-A, § 1106-A, added 1980, July 11, P.L. 600, No. 129, § 4, *iml.* effective; 2002, Dec. 9, P.L. 1246, No. 150, § 9, *iml.* effective.

<sup>1</sup> 25 P.S. § 3146.6.

<sup>2</sup> 25 P.S. §§ 3031.7, 3146.2, 3146.3, 3146.4, 3146.5, 3146.6.

## Historical and Statutory Notes

### Act 2002-150 legislation

Act 2002-150, § 9, designated the prior text of this section as subsec. (a) and added subsec. (b).

### § 3031.7. Requirements of electronic voting systems

## Cross References

Experimental use of electronic voting, exemption from the requirements of this section, see 25 P.S. § 3031.6.

### § 3031.12. Election day procedures and the process of voting

## United States Supreme Court

Freedom of political association, scribbled primary election system, requirement that only registered party members and invited independents vote in party primary, see

*Clingman v. Beaver*, 2005, 125 S.Ct. 2029, 161 L.Ed.2d 920, on remand 139 Fed.Appx. 936, 2005 WL 1626736.

## Notes of Decisions

### Ballots 1

#### Construction and application 5

#### Tabulation 2

### 5. Construction and application

Write-in votes cast for listed candidates may be counted so long as the voter's intent is clear and there is no sign of fraud. *Shambach v. Bickhart*, 845 A.2d 793, 577 Pa. 384, Sup.2004. Elections ¶ 181

Election Code provision permitting a voter to write in the name of any person not already printed on the ballot for that office must be liberally construed to protect voters' right to vote. *Shambach v. Bickhart*, 845 A.2d 793, 577 Pa. 384, Sup.2004. Elections ¶ 10

### 1. Ballots

Ballots in which voters punched a hole for a certain candidate, but additionally punched the hole for a write-in candidate without entering in a name for the write-in candidate, were not overvotes, and thus, ballots were properly counted toward election totals, by punching the hole for a named nominee, the voters selected only one candidate on the ballot for the office of township supervisor, and they clearly expressed their will to vote for a named nominee, not a write-in. *In re 2003 Election for Jackson Tp. Sup'y*, 840 A.2d 1044, Cmwh.2003. Elections ¶ 180(1); Elections ¶ 181

Line just above word "supervisor" on paper election ballot was a space provided on ballot to write in candidate's name for township supervisor, and thus stickers placed on line would be considered as votes for candidate whose name appeared on stickers, even though line could have been considered as end of candidate block for position of district magistrate. *Dayhoff v. Weaver*, 808 A.2d 1002, Cmwh.2002, appeal denied 819 A.2d 548, 572 Pa. 767. Elections ¶ 181

Both mark and written insertion of write-in candidate's name were required to cast vote for candidate on paper ballot that was designed to be counted electronically, and thus ballots containing name of write-in candidate for township treasurer but lacking blackened oval next to line for writing in candidate's name could not be counted, even though ballots were counted manually. *Dayhoff v. Weaver*, 808 A.2d 1002, Cmwh.2002, appeal denied 819 A.2d 548, 572 Pa. 767. Elections ¶ 181; Elections ¶ 239

Paper ballots on which voters either misspelled name of write-in candidate for township supervi-

sor or omitted candidate's first name should have been counted as votes for candidate, although candidate's wife had same last name as candidate, and although five registered voters in county had last name that was written on ballots, since neither wife nor any of other five voters with similar last names were candidates for any office. *Dayhoff v. Weaver*, 808 A.2d 1002, Cmwh.2002, appeal denied 819 A.2d 548, 572 Pa. 767. Elections ¶ 239

### 2. Tabulation

Trial court, in candidate's appeal of determination of county board of elections that election ended with tie vote, which resulted in other candidate winning election via lottery, erroneously did not consider legal arguments raised by each candidate regarding validity of tie votes, five votes for each candidate, that were not included in final vote tally by board due to lack of proper spelling of candidates' names or due to lack of last name of candidate, since question did not charge outcome of race. *Dayhoff v. Weaver*, 808 A.2d 1002, Cmwh.2002, appeal denied 819 A.2d 548, 572 Pa. 767. Elections ¶ 208(1)

Election Code provision permitting a voter to write in the name of any person not already printed on the ballot for that office does not void or prohibit the counting of write-in votes cast for listed candidates; statute governs voting systems where voters cast their votes on paper ballots or ballot cards, but automatic tabulating equipment is used to count the votes, and because an election official must count these votes, the tabulation of the write-in votes will not undermine the efficiency of the voting system or make it possible for voters to cast more than one vote for a single candidate. *Shambach v. Bickhart*, 845 A.2d 793, 577 Pa. 384, Sup.2004. Elections ¶ 181

Successful candidate for office of county commissioner was entitled to have 10 write-in votes from recount counted in his favor; although defeated candidate asserted that, since successful candidate's name appeared on ballot, 10 votes were not "properly cast" write-in votes, 10 voters clearly intended to vote for successful candidate, and there was no indication of double voting, and if any of 10 voters had cast regular vote for successful candidate in addition to write-in vote, members of county board conducting recount would have seen it upon examination of ballot cards. *In re Pennsylvania General Election for Snyder County Com'r*, 841 A.2d 593, Cmwh.2004, appeal granted 842 A.2d 468, 577 Pa. 675, affirmed 845 A.2d 793, 577 Pa. 384. Elections ¶ 181

### § 3031.13. Post election procedures

(a) As soon as the polls have been closed and the last elector has voted in districts having an electronic voting system which employs paper ballots or ballot cards, and district tabulation is provided for, the number of such ballots issued to electors (at primary elections, the number issued to the electors of each party), as shown by the stubs, and the number of ballots (at primaries the number of ballots of each party), if