WEST VIRGINIA CODE: §3-4A-9B

§3-4A-9b. Authorization for precinct ballot-scanning device; minimum requirements.

(a) For purposes of this section, "precinct ballot-scanning device" means a device used by the voter at the precinct on election day or during early voting for the purpose of scanning the voter's ballot after the ballot has been voted but prior to depositing the ballot into the ballot box.

(b) The precinct ballot-scanning device may be used for the purpose of scanning optically readable ballots cast in all primary, general and special elections.

(c) The precinct ballot-scanning device, firmware and programming software must be certified by an independent testing authority, according to current federal standards and be approved by the State Election Commission. No election official may enter into any contract to purchase, rent, lease or otherwise acquire any precinct ballot-scanning device, firmware or software not approved by the State Election Commission.

(d) The precinct ballot-scanning device shall additionally:

(1) Alert the voter if the voter has made more ballot selections than the law allows for an individual office or ballot issue;

(2) Alert the voter if the voter has made fewer ballot selections than the law allows for an individual office or ballot issue; and

(3) Allow voters an opportunity to change ballot selections, or correct errors, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct the error.

(e) The precinct ballot-scanning device may be used for tabulating election results only under the following conditions:

(1) The county has at least one precinct ballot-scanning device in each precinct;

(2) No tabulation of results is done at the precinct;

(3) The "tabulation memory device" may be removed from the ballot-scanning device only after the polls close and the votes may only be counted at the central counting center on the night of the election; and

(4) All voters at the precinct are required to use the ballot scanning device as a condition of completing their vote.

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(f) If the optical scan ballots from each of the precincts are counted at the central counting center on election night in accordance with section twenty-seven of this article, and the results from that count are the results finally published on election night, then any county meeting each of the requirements in paragraphs (1) through (4) of subsection (e), may turn off the over vote switch on the central counting device since every ballot will have been evaluated for over votes by the precinct scanning device.

(g) The Secretary of State is hereby directed to propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code in accordance with the provisions of this section.

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