
WEST VIRGINIA CODE CHAPTER 3
ARTICLE 4A

WV Legislature

§3-4A-1. Use of electronic voting systems authorized.

(a) Electronic voting systems may be used for the purpose of registering or recording and computing votes cast in general, special and primary elections: Provided, That the use of the electronic voting systems shall be governed by the terms, conditions, restrictions and limitations imposed by this article.

(b) Each county which is authorized to use electronic voting systems in any statewide election shall establish a written policy for securing the electronic voting equipment. The policy shall outline how the equipment is secured from tampering and under what circumstances county personnel are authorized to have access. The clerk of the county commission shall submit a copy of the policy to the Secretary of State by February 1 in each even-numbered year. The clerk shall also submit a copy of any change to the policy within thirty days after its adoption.

§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-3. Procedure for adopting electronic voting systems.

An electronic voting system that has been approved in accordance with section eight of this article may be adopted for use in general, primary and special elections in any county by the following procedure and not otherwise:

By a majority of the members of the county commission voting to adopt the same at a public meeting regularly called for that purpose: Provided, That the meeting be held not less than six months prior to the next scheduled primary or general election, with notice published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for such publication shall be the county involved.

§3-4A-4. Procedure for terminating use of electronic voting systems.

The use of an electronic voting system may be terminated:

(1) By a majority of the members of the county commission voting to terminate use of the system and replace it with a different voting system meeting the requirements of the Help America Vote Act of 2002, 42 U.S.C. §15301, et seq. at a special public meeting called for the purpose of said termination, with due notice thereof published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved: Provided, That such meeting shall be held not less than six months prior to a general election or six months prior to a primary election. If at such meeting, such county commission shall enter an order of its intention to terminate use of an electronic voting system, it shall thereafter forthwith cause to be published a certified copy of such order as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved. The first publication of such order shall not be less than twenty days after the entry of such order. Such county commission shall not terminate the use of an electronic voting system until ninety days after the entry of such order of its intention to terminate the same. Promptly after the expiration of ninety days after the entry of such order of intention to terminate the use of an electronic voting system, if no petition has theretofore been filed with such county commission requesting a referendum on the question of termination of the electronic voting system as hereinafter provided, such county commission shall enter a final order terminating the use of the electronic voting system, and the use of electronic voting system shall thereby be terminated. If a petition has been submitted as provided in this subdivision, the county commission shall not terminate the use of the system but shall proceed as provided in this subdivision.

If five percent or more of the registered voters of such county shall sign a petition requesting that the use of an electronic voting system be terminated in such county and such petition be filed with the county commission of such county within ninety days after the entry of such order of intention to terminate the use of an electronic voting system, such county commission shall submit to the voters of such county at the next general or primary election, whichever shall first occur, the question: "Shall the use of an electronic voting system be terminated in County?" If this question be answered in the affirmative by a majority of the voters in such election upon the question, the use of an electronic voting system shall thereby be terminated. If such question shall not be answered in the affirmative by such majority, the use of an electronic voting system shall continue.

(2) By the affirmative vote of a majority of the voters of such county voting upon the question of termination of the use of an electronic voting system in such county. If five percent or more of the registered voters of such county shall sign a petition requesting the termination of the use of an electronic voting system in such county, and such petition be filed with the county commission of such county, such county commission shall submit to the voters of such county at the next general or primary election, following by not less than ninety days

the date of the filing of such petition, the question: "Shall the use of an electronic voting system be terminated in County?" If this question be answered in the affirmative by a majority of the voters of such county voting upon the question, the use of an electronic voting system shall thereby be terminated. If such question shall not be answered in the affirmative by a majority of the voters of such county voting upon the question, the use of an electronic voting system shall thereby continue.

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§3-4A-5. Duty of county commission to acquire vote recording devices, acquire use of automatic tabulating equipment, and provide a central counting center.

If the use of an electronic voting system shall have been adopted as hereinbefore provided, it shall be the duty of the county commission of such county to acquire the necessary number of vote recording devices to supply all or part of the election precincts within such county as soon as possible, and to acquire such reserve vote recording device or devices as will be deemed necessary. All such acquisition of vote recording devices shall be by sealed competitive bidding.

If it shall be impossible for the county commission to comply with its order or with the decision of the voters in a referendum at the next primary or general election, it shall in any event do so at the next following primary or general election, whichever shall first occur.

It shall be the further duty of the county commission of such county to acquire prior to any election in which such electronic voting system is to be used, the use of automatic tabulating equipment approved by the state election commission, for the purpose of counting votes in such election. In addition, the county commission of such county shall provide the necessary central counting center for use in said election. Such central counting center shall be located at the county seat of the county involved.

§3-4A-6. Acquisition of vote recording devices by purchase or lease; acquisition of use of automatic tabulating equipment; counting centers.

(a) A county commission may acquire vote recording devices by any one or any combination of the following methods:

(1) By purchasing the same and paying the purchase price from funds available from the maximum general levy or from any other lawful source; and

(2) By leasing the same under written contract of lease and paying the rentals from funds available from the maximum general levy or any other lawful source.

(b) A county commission may acquire the use of automatic tabulating equipment by leasing or renting the same under written contract of lease or rental and paying the rentals therefor from funds available from the maximum general levy or other lawful source.

(c) A county commission may enter into an agreement with another county commission to share automatic tabulating equipment if the automatic tabulating equipment may be transported to the appropriate central counting centers. No ballots may be transported for counting in any county other than the county in which the votes were cast.

(d) A county commission is authorized to accept as a gift the use of suitable automatic tabulating equipment.

(e) The county commission may also secure a counting center.

§3-4A-7. Bids and contracts for vote recording devices; false swearing or failure to disclose facts.

Contracts for the purchase or lease of vote recording devices shall be based on competitive bids. The county court shall solicit sealed bids by sending requests by mail to all known manufacturers and suppliers of vote recording devices which have been previously approved by the state election commission as hereinafter provided. The award of contracts of purchase or lease shall be based on the quality, cost, specifications and suitability of the particular vote recording device, technical services to be provided by the manufacturer, and the cost and availability of automatic tabulating equipment suitable for use in connection with said vote recording devices and the ballot cards used therewith.

No bid shall be accepted by the county court unless accompanied by a contract which shall provide that in the event the bid is accepted the party or parties making the sale or lease shall:

- (1) Guarantee in writing to keep the vote recording devices in good working order for five years without additional cost to the county court.
- (2) Warrant to defend and indemnify the county court against any claim for patent infringement, and in case any vote recording device or devices shall be held to be an infringement of a valid patent, to obtain a license for the use of such patent on the vote recording devices sold or leased to the county court or to modify the devices so that the offending infringement is removed without altering the efficiency or statutory requirements of the devices; all at the sole cost and expense of the supplier of the vote recording devices.
- (3) Provide a bond with good corporate surety duly qualified to do business in West Virginia, conditioned upon the due performance of said guaranty and said warranty, in a penal sum to be fixed by the county court.

No bid shall be accepted by the county court unless the party or parties submitting the bid shall file with the bid an affidavit:

- (1) Disclosing the name and address of, and the amount of any contribution paid or to be paid to, any individual, partnership, corporation or association hired regularly and specially for the purpose, or party for the purpose, of attempting to influence directly or indirectly the purchase or lease of the vote recording devices represented by the bid.
- (2) Declaring that no individual, partnership, corporation or association not disclosed in said affidavit shall thereafter be regularly or specially hired and no contribution shall thereafter be paid for the purpose or partly for the purpose of attempting to influence directly or indirectly the purchase or lease of the vote recording devices represented by the bid.

For the purpose of this affidavit, the word "contribution" shall mean payment, distribution, loan, advance, deposit, gift of money, property, benefit or other consideration, or any

agreement providing for a payment, distribution, loan, advance, deposit, or gift by money, property, benefit, or other consideration at any future time.

Any person who shall knowingly or wilfully make any false or fraudulent statement, or who shall knowingly or wilfully fail to disclose any material fact in the affidavit required by this section shall be guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than \$1,000 nor more than \$5,000 or imprisonment in the state penitentiary for not less than one year nor more than three years, or both, in the discretion of the court.

In construing this section, the term "person" shall include an individual, partnership, committee, association, and any other organization or group of persons.

§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-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 marked 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;
- (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 by 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 each candidate and for and against each question appearing upon the ballots;
- (9) 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;
- (10) It, where applicable, is provided with means for sealing or electronically securing the

vote-recording device to prevent its use and to prevent tampering with the device, both before the polls are open or before the operation of the vote-recording device for an election is begun and immediately after the polls are closed or after the operation of the vote-recording device for an election is completed;

(11) 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 15 questions;

(12) (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;

(13) 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; and

(D) Be accompanied by a mechanically or electronically operated instruction model which shows the arrangement of the ballot, party columns or rows and questions;

(14) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, they shall:

(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 electronic memory and contain an internal security, the absence of which prevents substitution of any other device;

(G) Store each vote in no fewer than three separate, independent, nonvolatile electronic memory components and that each device contains comprehensive diagnostics to ensure that failures do not go undetected;

(H) Contain a unique, embedded internal serial number for auditing purposes for each device used to activate, retain and record votes;

(I) Be constructed to record all pre-election, election and post-election activities, including all ballot images and system anomalies, in each device's internal electronic memory and are to be accessible in electronic or printed form;

(J) Be constructed with a battery backup system in each device to, at a minimum, prevent the loss of any votes, as well as all pre-election, election and post-election activities, including all ballot images and system anomalies, stored in the device's internal electronic memory and to allow voting to continue for two hours of uninterrupted operation in case of an electrical power failure; and

(K) Be constructed to prevent the loss of any votes, as well as all pre-election, election and post-election activities, including all ballot images and system anomalies, stored in each device's internal electronic memory even in case of an electrical and battery power failure.

(15) For purposes of this section, all voting systems utilized in any election shall be independent, nonnetworked voting systems, and any component thereof, in whole or in part, shall not at any time connect to the internet.

§3-4A-9a. Authorization for ballot-marking voting systems; minimum requirements.

(a) For purposes of this section, "ballot-marking accessible voting system" means a device which allows voters, including voters with disabilities, to mark an optical scanning or mark-sensing voting system ballot, privately and independently. The ballot-marking device is capable of marking voter selections on an optically readable or mark-sensing ballot which shall be subsequently read and tallied on state certified optically readable or mark-sensing ballot tabulating and reporting systems. Counties are hereby permitted to obtain and employ ballot-marking accessible voting systems that are approved by the State Election Commission.

(b) The ballot-marking accessible voting device shall be a completely integrated ballot-marking device that is designed to allow voters to either view ballot choices through a high resolution visual display or listen to ballot choices with headphones and then enter ballot selections directly through specially designed, integrated accessibility devices.

(c) Ballot-marking accessible voting systems may be used for the purpose of marking or scanning optically readable or mark-sensing ballots cast in all general, special and primary elections and shall meet the following specific requirements:

(1) The ballot-marking accessible voting system, system firmware and programming software must be certified by an independent testing authority, according to current federal voting system standards and be approved by the State Election Commission prior to entering into any contract.

(2) The ballot-marking accessible voting system shall, additionally:

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

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

(C) Allow the voter to independently review all ballot choices and make any corrections, before the ballot is marked;

(D) Provide the voter with the opportunity to make a write-in ballot choice, where allowed by state law;

(E) Allow voters with disabilities to mark their ballots, in complete independence, and in conformity with both federal and state law concerning mandatory accessibility for disabled persons;

(F) Allow blind or visually impaired voters to vote in complete privacy;

(G) Provide voters with an opportunity to change ballot selections, or correct errors, before

the ballot is marked for voting, 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;

(H) Provide voters with the ability to view all ballot selections through a high resolution visual display or to have all ballot selections read to the voter through headphones;

(I) Ensure complete ballot privacy, while employing the ballot-marking audio system and providing the voter with the option to turn off the visual ballot display;

(J) Include a completely integrated voter input keypad, using commonly accepted voter accessibility keys with Braille markings;

(K) Include the ability for a voter to employ a sip/puff device to enter ballot choices;

(L) Allow the voter to magnify all ballot choices and to adjust both the volume of the audio feature and the speed of ballot presentation;

(M) Allow the voter to employ his or her own headset as well as the headset provided with the ballot-marking device while being equipped with multiple output connections to accommodate different headsets;

(N) Have multiple-language capability; and

(O) Allow the voter to verify that:

(i) An optical scan ballot inserted into the device at the start of voting is blank; and

(ii) The voted optical scan ballot that is produced by the device is voted as the voter intended.

(d) 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 designed to ensure that any system employed by a county under the provisions of this section is publicly tested prior to use in election.

§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.

(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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§3-4A-10. County clerk to be custodian of vote-recording devices, tabulating equipment and electronic poll books; duties.

(a) When an electronic voting system is acquired by any county commission, the vote-recording devices, where applicable, and the tabulating equipment shall be immediately placed in the custody of the county clerk and shall remain in his or her custody at all times except when in use at an election or when in custody of a court or court officers during contest proceedings. The clerk shall see that the vote-recording devices and the tabulating equipment are properly protected and preserved from damage or unnecessary deterioration and shall not permit any unauthorized person to tamper with them. The clerk shall also keep the vote-recording devices and tabulating equipment in repair and prepare the same for voting.

(b) When a county commission elects to acquire and use electronic poll books in lieu of printed poll books, the clerk of the county commission shall immediately take custody of the electronic poll books, which shall remain in his or her custody at all times except when in use at an election or when in the custody of a court or court officers during contest proceedings. The clerk shall ensure that the electronic poll books are properly protected and preserved from damage or unnecessary deteriorations and the clerk shall not permit any unauthorized person to tamper with the electronic poll books. The clerk shall also keep the electronic poll books in good repair and the clerk shall prepare the electronic poll books for election day.

§3-4A-10a. Proportional distribution of vote-recording devices.

Where vote-recording devices are used, the county commission of each county shall, upon the close of registration, review the total number of active registered voters and the number of registered voters of each party in each precinct. Prior to each election, the commission shall determine the number of voting devices needed to accommodate voters without long delays and shall assign an appropriate number to each precinct. For the purposes of the primary election, the commission shall assign the number of vote recording devices in each precinct to be prepared for each party based as nearly as practicable on the proportion of registered voters of each party to the total: Provided, That a minimum of two vote-recording devices be provided.

§3-4A-11.

Repealed.

Acts, 2007 Reg. Sess., Ch. 101.

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§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the electronic voting system for use in elections.

(b) (1) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office are to conform as nearly as possible to §3-5-13 and §3-5-13a of this code.

(2) For the general election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and the arrangement of candidates within each office are to conform as nearly as possible to §3-6-2 of this code.

(3) Effective with the primary election held in 2016 and thereafter, the following nonpartisan elections are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot wherever a separate ballot is required under this chapter:

(A) Nonpartisan elections for judicial offices, by division, of:

(i) Justice of the Supreme Court of Appeals;

(ii) Judge of the Intermediate Court of Appeals;

(iii) Judge of the circuit court;

(iv) Family court judge; and

(v) Magistrate;

(B) Nonpartisan elections for Board of Education; and

(C) Any question to be voted upon.

(4) Beginning in the primary election to be held in the year 2020 and in each election thereafter, the nonpartisan judicial elections described in subparagraphs (i) through (iv), paragraph (A), subdivision (3), of this subsection shall appear immediately after the state ticket and shall immediately precede the county ticket, in the same manner prescribed in §3-5-13a of this code.

(5) Both the face and the reverse side of the ballot may contain the names of candidates only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot

box and upon which marks do not interfere with the proper tabulation of the votes.

(6) The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words "WRITE-IN, IF ANY" are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the Secretary of State for the various political parties, and the general election ballot is to be printed in black ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as provided in §3-5-13 of this code, or are to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

§3-4A-12.

Repealed.

Acts, 2007 Reg. Sess., Ch. 101.

WV Legislature

§3-4A-13. Inspection of ballots, electronic poll books and vote-recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote-recording devices; receipt of election materials by ballot commissioners.

(a) When the clerk of the county commission has completed the preparation of the ballots and of any electronic poll books and vote-recording devices as provided in sections eleven-a and twelve-a of this article and as provided in section twenty-one, article one of this chapter, and not later than seven days before the day of the election, he or she shall notify the members of the county commission and the ballot commissioners that the ballots and any electronic poll books and devices are ready for use.

(b) The members of the county commission and the ballot commissioners shall convene at the office of the clerk or at such other place at which any vote-recording devices or electronic poll books and the ballots are stored, not later than five days before the day of the election, and shall inspect the devices, electronic poll books and the ballots to determine whether the requirements of this article have been met. Notice of the place and time of the inspection shall be published, no less than three days in advance, as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county involved.

(c) Any candidate and one representative of each political party on the ballot may be present during the examination. If the devices and electronic poll books and ballots are found to be in proper order, the members of the county commission and the ballot commissioners shall endorse their approval in the book in which the clerk entered the numbers of the devices opposite the numbers of the precincts.

(d) The vote-recording devices, the electronic poll books and the ballots shall then be secured in double lock rooms. The clerk and the president or president pro tempore of the county commission shall each have a key. The rooms shall be unlocked only in their presence and only for the removal of the devices, electronic poll books and the ballots for transportation to the polls. Upon removal of the devices, the electronic poll books and the ballots, the clerk and president or president pro tempore of the county commission shall certify in writing signed by them that the devices, the electronic poll books and packages of ballots were found to be sealed when removed for transportation to the polls.

(e) Vote-recording devices used during the early voting period may be used on election day if retested in accordance with all the provisions of this section, including public notice between the close of early voting and prior to precinct placement for election day. Vote-recording devices must comply with the applicable requirements of section twenty-six of this article.

(f) Not later than one day before the election, the election commissioner of each precinct previously designated by the ballot commissioners shall attend at the office of the clerk of the county commission to receive the necessary election records, books and supplies

required by law. The election commissioners shall receive the per diem mileage rate prescribed by law for this service. The election commissioners shall give the ballot commissioners a sequentially numbered written receipt, on a printed form, provided by the clerk of the county commission, for such records, books and supplies. The receipt shall be prepared in duplicate. One copy of the receipt shall remain with the clerk of the county commission and one copy shall be delivered to the president or president pro tempore of the county commission.

WV Legislature

§3-4A-13a.

Repealed.

Acts, 2011 Reg. Sess., Ch. 60.

WV Legislature

§3-4A-14. Election boards where electronic voting systems used.

One receiving board, as defined in article one of this chapter, shall conduct the election in each precinct in which electronic voting systems are used. The provisions of article one of this chapter relating to the qualifications, appointment, substitution, training and compensation of election officers and to the procedure for filling vacancies shall apply.

WV Legislature

§3-4A-15. Instructions and help to voters; vote-recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.

(a) For the instruction of the voters on any election day in counties utilizing an electronic voting system that uses a screen upon which votes may be recorded by means of a stylus or by means of touch, the ballot commissioners shall provide for each polling place a sample ballot with each screen as it will appear on the devices, together with written instructions regarding the operation of the devices. Upon request, the election officers shall offer instruction to each voter, before voting, in the operation of the vote-recording device.

(b) The ballot commissioners shall also provide facsimile ballots, at least two of which, or complete sets of which, are to be posted on the walls of each polling place. The facsimile diagrams are exact diagrams of the ballots or screens so that the voter may become familiar with the location of the parties, offices, candidates, and questions as they appear on the ballot to be used in his or her precinct.

(c) The ballot commissioners may, with the consent of the county commission, or the county commission may, prepare and mail to each qualified voter at the address shown on the registration books a facsimile sample of the ballot or screens for his or her precinct.

(d) In counties where an electronic voting system has been adopted, the legal ballot advertisements required by §3-5-1 et seq. and §3-6-1 et seq., which specify the publication of a facsimile sample ballot, are to consist of a facsimile of the absentee ballot, or a facsimile of each of the electronic voting system screens with the names of the candidates and the offices for which they are running shown in their proper positions: Provided, That when the sample ballots for the precincts within the county contain different senatorial, delegate, magisterial, or executive committee districts or when the sample ballots for precincts within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided between more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

§3-4A-16. Delivery of vote-recording devices and electronic poll books; time, arrangement for voting.

The clerk of the county commission shall deliver or cause to be delivered each vote-recording device, electronic poll book and the package of ballots to the polling place where they are to be employed. The delivery shall be made not less than one hour prior to the opening of the polls and in the presence of the precinct election commissioners. At the time of the delivery the device and electronic poll books are to be sealed to prevent any use prior to the opening of the polls and the ballots are to be packaged and sealed to prevent any tampering with the ballots. Immediately prior to the opening of the polls on election day, the sealed packages of ballots are to be opened, where applicable, and the seal of the vote-recording device and the seal of the electronic poll book is to be broken in the presence of the precinct election commissioners, who shall certify in writing signed by them to the clerk of the county commission that the devices, where applicable, and the ballots have been delivered in their presence, that the devices and packages of ballots were found to be sealed upon delivery and that the seals have been broken and the devices opened in their presence, as may be appropriate. The election commissioners shall then cause the vote-recording device and booth to be arranged so that the front of the vote-recording device will not be visible, when the vote-recording device is being operated, to any person other than the voter. The poll clerks shall ensure that the vote-recording device is placed in a location that maintains voter privacy through the entire period of voting.

§3-4A-17. Check of vote-recording devices and electronic poll books before use; corrections; reserve vote-recording devices.

(a) Any reserve vote-recording device used is to be prepared for use by the clerk or his or her duly appointed deputy and the reserve vote-recording device is to be prepared, inspected and sealed and delivered to the polling place wherein the seal is to be broken and the device opened in the presence of the precinct election commissioners who shall certify in writing signed by them to the clerk of the county commission, that the reserve vote-recording device was found to be sealed upon delivery to the polling place, that the seal was broken and the device opened in their presence at the polling place.

(b) In counties using electronic poll books, the election commissioners shall examine the electronic poll books to ascertain whether the poll books are in working order before allowing any voters to enter the polling location. If the electronic poll books are not in working order, the election commissioners shall contact the county clerk who shall immediately authorize a printed poll book to serve in place of the electronic poll book for that election. A printed poll book may accompany the electronic poll book to each precinct.

§3-4A-18. Disrepair of vote recording devices in use; reserve vote recording devices.

If, during the conduct of an election, a vote recording device becomes in a state of disrepair so that it cannot be operated in a manner that will comply with the provisions of this article, the election commissioners shall seal the device in such manner as to prevent further voting thereon. Then the election commissioners shall secure from the county clerk a reserve vote recording device, which shall be prepared, inspected and delivered to the polling place wherein the seal shall be broken and such device opened in the presence of the precinct election commissioners who shall certify in writing signed by them to the clerk of the county commission, that the reserve vote recording device was found to be sealed upon delivery to the polling place, that the seal was broken and the device opened in their presence at the polling place. The commissioners shall proceed to conduct the election.

§3-4A-19. Conducting electronic voting system elections generally; duties of election officers; penalties.

(a) The election officers shall constantly and diligently maintain a watch in order to see that no person votes more than once and to prevent any voter from occupying the voting booth for more than five minutes.

(b) In primary elections, before a voter is permitted to occupy the voting booth, the election commissioner representing the party to which the voter belongs shall direct the voter to the vote-recording device or supply the voter with a ballot, as may be appropriate, which will allow the voter to vote only for the candidates who are seeking nomination on the ticket of the party with which the voter is affiliated or for unaffiliated voters in accordance with section thirty-one, article two of this chapter.

(c) The poll clerk shall issue to each voter when he or she signs the poll book a printed card or ticket numbered to correspond to the number on the poll book of the voter and in the case of a primary election, indicating the party affiliation of the voter, which numbered card or ticket is to be presented to the election commissioner in charge of the voting booth.

(d) One hour before the opening of the polls the precinct election commissioners shall arrive at the polling place and set up the voting booths in clear view of the election commissioners. Where applicable, they shall open the vote-recording devices, place them in the voting booths, examine them to see that they have the correct ballots by comparing them with the sample ballots, and determine whether they are in proper working order. They shall open and check the ballots, the electronic poll books, if applicable, supplies, records and forms and post the sample ballots and instructions to voters. Upon ascertaining that all ballots, supplies, electronic poll books, if applicable, records and forms arrived intact, the election commissioners shall certify their findings in writing upon forms provided and collected by the clerk of the county commission over their signatures to the clerk of the county commission. Any discrepancies are to be noted and reported immediately to the clerk of the county commission. The election commissioners shall then number in sequential order the ballot stub of each ballot in their possession and report in writing to the clerk of the county commission the number of ballots received. They shall issue the ballots in sequential order to each voter.

(e) Upon entering a precinct which is using an electronic poll book, each voter shall be verified by use of the electronic poll book to be a registered voter. If the voter is not registered according to the electronic poll book within that precinct, the poll clerk is to inform the voter of the proper precinct in which the voter is registered.

(f) Where applicable, each voter shall be instructed how to operate the vote-recording device before he or she enters the voting booth.

(g) Where applicable, any voter who spoils, defaces or mutilates the ballot delivered to him or her, on returning the ballot to the poll clerks, shall receive another in its place. Every

person who does not vote any ballot delivered to him or her shall, before leaving the election room, return the ballot to the poll clerks. When a spoiled or defaced ballot is returned, the poll clerks shall make a minute of the fact on the poll books, at the time, write the word "spoiled" across the face of the ballot and place it in an envelope for spoiled ballots.

Immediately on closing the polls, the election commissioners shall ascertain the number of spoiled ballots during the election and the number of ballots remaining not voted. The election commissioners shall also ascertain from the poll books the number of persons who voted and shall report, in writing signed by them to the clerk of the county commission, any irregularities in the ballot boxes, the number of ballots cast, the number of ballots spoiled during the election and the number of ballots unused. All unused ballots are to be returned at the same time to the clerk of the county commission who shall count them and record the number. All unused ballots shall be stored with the other election materials and destroyed at the expiration of twenty-two months.

(h) Each commissioner who is a member of an election board which fails to account for every ballot delivered to it is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail for not more than one year, or both.

(i) The board of ballot commissioners of each county, or the chair of the board, shall preserve the ballots that are left over in their hands, after supplying the precincts as provided, until the close of the polls on the day of election and shall deliver them to the clerk of the county commission who shall store them with the other election materials and destroy them at the expiration of twenty-two months.

(j) Where ballots are used, the voter, after he or she has marked his or her ballot, shall, before leaving the voting booth, place the ballot inside the envelope or sleeve provided for this purpose, with the stub extending outside the envelope, and return it to an election commissioner who shall remove the stub and deposit the envelope, if applicable, with the ballot inside in the ballot box. No ballot from which the stub has been detached may be accepted by the officer in charge of the ballot box, but the ballot shall be marked "spoiled" and placed with the spoiled ballots. If an electronic voting system is used that utilizes a screen on which votes may be recorded by means of a stylus or by means of touch and the signal warning that a voter has attempted to cast his or her ballot has failed to do so properly has been activated and the voter has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot while the voter remains physically present in the polling place, then two election commissioners of different registered party affiliations, two poll clerks of different registered party affiliations or an election commissioner and a poll clerk of different registered party affiliations shall spoil the ballot.

(k) The precinct election commissioners shall prepare a report in quadruplicate of the number of voters who have voted and, where electronic voting systems are used that utilize a screen on which votes may be recorded by means of a stylus or by means of touch, the number of ballots that were spoiled, as indicated by the poll books, and shall place two copies of this report in the ballot box or where electronic voting systems are used that utilize

a screen upon which votes may be recorded by means of a stylus or by means of touch, shall place two copies of this report and the electronic ballot devices in a container provided by the clerk of the county commission, which thereupon is to be sealed with a paper seal signed by the election commissioners to ensure that no additional ballots may be deposited or removed from the ballot box. Two election commissioners of different registered party affiliations or two special messengers of different registered party affiliations appointed by the clerk of the county commission, shall forthwith deliver the ballot box or container to the clerk of the county commission at the central counting center and receive a signed numbered receipt therefor. The receipt must carefully set forth in detail any and all irregularities pertaining to the ballot boxes or containers and noted by the precinct election officers.

The receipt is to be prepared in duplicate, a copy of which remains with the clerk of the county commission who shall have any and all irregularities noted. The time of their departure from the polling place is to be noted on the two remaining copies of the report, which are to be immediately mailed to the clerk of the county commission.

(l) The poll books, register of voters, unused ballots, spoiled ballots and other records and supplies are to be delivered to the clerk of the county commission, all in conformity with the provisions of this section.

§3-4A-19a. Form of ballots; requiring the signatures of poll clerks; prohibiting the counting of votes cast on ballots without signatures.

(a) Where applicable, every ballot utilized during the course of any electronic voting system election conducted under the provisions of this article is to have two lines for the signatures of the poll clerks. Both of the signature lines are to be printed on a portion of the ballot where votes are not recorded by perforation or marking, but which portion is an actual part of the ballot deposited in the ballot box after the voter has perforated or marked his or her ballot and after the ballot stub has been removed. Each of the two poll clerks shall sign his or her name on one of the designated lines provided on each ballot before any ballot is distributed to a voter.

(b) After a voter has signed the pollbook, as required in section nineteen of this article, the two poll clerks shall deliver a ballot to the voter, which ballot has been signed by each of the two poll clerks as provided in this section: Provided, That where an electronic voting system that utilizes screens upon which votes may be recorded by means of a stylus or by means of touch, an election commissioner shall accompany the voter to the voting device and shall activate the device for voting.

(c) Any ballot which does not contain the proper signatures shall be challenged. If an accurate accounting is made for all ballots in the precinct in which the ballot was voted and no other challenge exists against the voter, the ballot shall be counted at the canvas.

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

Unless a voter, not affiliated with a party, is permitted to 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.

§3-4A-21.

Repealed.

Acts, 2003 Reg. Sess., Ch. 100.

WV Legislature

§3-4A-22. Assistance to illiterate and disabled voters.

(a) Any duly registered voter who requires assistance to vote by reason of blindness, disability, advanced age or inability to read and write may be given assistance by one of the following means:

(1) By a person of the voter's choice: Provided, That the assistance may not be given by the voter's present or former employer or agent of that employer or by an officer or agent of a labor union of which the voter is a past or present member or a candidate on the ballot or official write-in candidate; or

(2) If no person of the voter's choice be present at the polling place, the voter may request assistance from the poll clerks or ballot commissioners present at the polling place, whereupon assistance may be given by any two of the election officers of opposite political party affiliation to whom the voter shall thereupon declare his or her choice of candidates and his or her position on public questions appearing on the ballot. The election officers, in the presence of the voter and in the presence of each other, shall thereupon cause the voter's declared choices to be recorded on the ballot or a vote recording device, as may be appropriate, as votes.

(b) A person other than an election officer who assists a voter in voting under the provisions of this section shall sign a written oath or affirmation before assisting the voter, stating that he or she will not override the actual preference of the voter being assisted or mislead the voter into voting for someone other than the candidate of the 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.

§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-24. Voting by challenged voter.

Except for electronic voting systems using screens on which votes may be recorded by means of a stylus or by means of touch, if the right of any person to vote be challenged in accordance with the provisions of article one of this chapter, relating to the challenging of voters, and a vote recording device or ballot is used that tabulates the vote as an individual vote, the person is to be permitted to cast his or her vote by use of the vote recording device or ballot, as may be appropriate. He or she is to be provided with a challenged ballot and ballot envelopes for the insertion of the ballot after voting. There is to be an inner envelope marked with the precinct number for the challenged ballot. There is also to be another envelope for the inner envelope and the challenged voter stub, which envelope provides a place for the challenged voter to affix his or her signature on the seal of the outer envelope.

After the county commission, as prescribed in article one of this chapter, has determined that the challenges are unfounded, the commissioners shall remove the outer envelopes. Without opening the inner envelope, the commissioners shall shuffle and intermingle the inner envelopes. The commissioners shall then open the inner envelopes, remove the ballots and add the votes to the previously counted totals.

§3-4A-24a. Voting by challenged voter where touch-screen electronic voting systems are used.

If the right of any person to vote is challenged in accordance with the provisions of article one of this chapter, relating to the challenging of voters, and a vote recording device or ballot is used that tabulates the vote as an individual vote, the person is to be permitted to cast his or her vote by use of the vote recording device or ballot, as may be appropriate. An election commissioner shall enter into the voting device a voter-specific electronic code for any person voting a provisional ballot. The devices are to retain provisional ballots in electronic memory and are not to be tabulated in accordance with the provisions of this code, but are to be reviewed in accordance with the provisions of this code.

After the county commission, as prescribed in article one of this chapter, has determined that the challenges are unfounded, the commissioners shall ensure that the ballots are included in the tabulation.

§3-4A-25. Closing polls.

As soon as the polls have been closed and the last qualified voter has voted, no further voting on any ballot may be had and the vote recording devices utilized in counties with electronic voting systems where votes are recorded by perforating shall be sealed against further voting. All unused ballots shall be placed in a container for return to the clerk of the county commission.

WV Legislature

§3-4A-26. Test of automatic tabulating equipment.

(a) One week prior to the start of the count of the votes recorded on ballots or screens, the clerk of the county commission shall have the automatic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all measures. This test shall consist of a test of the entire voting system, including removal of data from a vote-recording device and its transferral to automatic tabulating equipment. The county commission shall give public notice of the time and place of the test not less than forty-eight hours nor more than two weeks prior to the test by publication of a notice as a Class I-0 legal advertisement in the county involved, in compliance with the provisions of article three, chapter fifty-nine of this code.

(b)(1) Vote-recording devices used and tested for early voting may also be used on election day upon compliance with all of the following requirements:

(A) Following the close of early voting, the personal electronic ballot and the programable memory chip shall be removed and replaced with another personal electronic ballot and programable memory chip prepared for, but unused during, the current election period;

(B) The printed paper trail used during the early voting period shall be removed and replaced with a new paper trail; and

(C) The vote-recording device shall be retested prior to being used on election day.

(2) Any personal electronic ballot programable memory chip and printed paper trail removed from a vote-recording device used for early voting shall be securely stored by the county clerk until such time as it is used to tally the votes on election day in accordance with section twenty-seven of this article.

(c) (1) A test performed pursuant to this section shall be open to representatives of the political parties, candidates, the press and the public. It is to be conducted by processing a set of preaudited ballots marked to record a predetermined number of valid votes for each candidate or each measure. For each multicandidate office, the test shall include one or more ballots which have cross-over votes in order to test the ability of the automatic tabulating equipment to record those votes in accordance with the provisions of this article and any other applicable law. For each office, the test shall include one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject votes. If, in the process of any of the test counts, any error is detected, the cause of the error is to be ascertained and corrective action promptly taken. After the completion of the corrective action, the test counts are to continue, including a retesting of those precincts previously test counted. Prior to the continuation of the testing, the county commission shall certify in writing, signed by each commissioner, the nature of the error, its cause and the type of corrective action taken. The certification shall be recorded in the office of the clerk of the county commission in the record book. Immediately after conclusion of this completed test, a certified duplicate copy

of the test results shall be sent by certified mail to the offices of the state Election Commission, where it is to be preserved and secured for one year and made available for comparison or analysis by order of a circuit court or the Supreme Court of Appeals.

(2) The tabulating equipment to be used in the election shall be immediately certified by the county commission to be free from error as determined by the test. All testing material shall be placed with the certification in a sealed container and kept under individual multiple locks with individual keys for each lock. The number of locks and keys shall be the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his or her possession. The sealed container shall be opened to conduct the test required immediately before the start of the official count.

(3) The test shall be repeated immediately before the start of the official count and at the conclusion of the official count before the count is approved as errorless and before the election returns are approved as official.

(4) All results of all of the tests are to be immediately certified by the county commission, filed in the office of the clerk of the county commission and immediately recorded in the record book. On completion of the count, the test materials and test ballots are to be sealed, except for purposes of the canvass as provided in section twenty-eight of this article, and retained and kept under individual multiple locks and individual keys for each lock. The number of locks and keys shall be the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his or her possession.

§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; and

(5) 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.

§3-4A-28. Post-election custody and inspection of vote-recording devices and electronic poll books; canvass and recounts.

(a) The vote-recording devices, electronic poll books, tabulating programs and standard validation test ballots are to remain sealed during the canvass of the returns of the election, except that the equipment may be opened for the canvass and must be resealed immediately thereafter. During the seven-day period after the completion of the canvass, any candidate or the local chair of a political party may be permitted to examine any of the sealed materials: Provided, That a notice of the time and place of the examination shall be posted at the central counting center before and on the hour of nine o'clock in the morning on the day the examination is to occur and all persons entitled to be present at the central counting center may, at their option, be present. Upon completion of the canvass and after the seven-day period has expired, the vote-recording devices, test results and standard validation test ballots are to be sealed for one year: Provided, however, That the vote-recording devices, electronic poll books and all tabulating equipment may be released for use in any other lawful election to be held more than ten days after the canvass is completed and any of the electronic voting equipment or electronic poll books discussed in this section may be released for inspection or review by a request of a circuit court or the Supreme Court of Appeals.

(b) In canvassing the returns of the election, the board of canvassers shall examine, as required by subsection (d) of this section, all of the vote-recording devices, electronic poll books, the automatic tabulating equipment used in the election and those voter-verified paper ballots generated by direct recording electronic vote machines, shall determine the number of votes cast for each candidate and for and against each question and, by this examination, shall procure the correct returns and ascertain the true results of the election. Any candidate or his or her party representative may be present at the examination.

(c) If any qualified individual demands a recount of the votes cast at an election, the voter-verified paper ballot shall be used according to the same rules that are used in the original vote count pursuant to section twenty-seven of this article. For purposes of this subsection, "qualified individual" means a person who is a candidate for office on the ballot or a voter affected by an issue, other than an individual's candidacy, on the ballot.

(d) During the canvass, at least three percent of the precincts are to be chosen at random and the voter-verified paper ballots are to be counted manually. Whenever the vote total obtained from the manual count of the voter-verified paper ballots for all votes cast in a randomly selected precinct:

(1) Differs by more than one percent from the automated vote tabulation equipment; or

(2) Results in a different prevailing candidate or outcome, either passage or defeat, of one or more ballot issues in the randomly selected precincts for any contest or ballot issue, then the discrepancies shall immediately be disclosed to the public and all of the voter-verified paper ballots shall be manually counted. In every case where there is a difference between the vote

totals obtained from the automated vote tabulation equipment and the corresponding vote totals obtained from the manual count of the voter-verified paper ballots, the manual count of the voter-verified paper ballots is the vote of record.

WV Legislature

§3-4A-29. Incorrect recordation or tabulation of votes; testing accuracy of vote recording devices and automatic tabulating equipment; procedures and requirements.

(1) When during a canvass or a recount of votes in an election it appears to the board of canvassers or if it is so alleged in a petition for a recount, that a vote recording device or piece of automatic tabulating equipment used in the election has by reason of mechanical failure or improper or fraudulent preparation or tampering, incorrectly recorded or tabulated the actual votes cast or counted on such device or equipment, the board of canvassers shall proceed to determine whether an error has occurred in the vote recorded or counted on such device or equipment. If an error is found, the board of canvassers shall have the cause of the error corrected and the ballots affected recounted so that the election returns will accurately reflect the votes cast at such election if it is possible to accurately correct such error. If the board of canvassers is unable to accurately correct such errors made by said device or equipment and therefore cannot correct the returns to accurately reflect the actual votes cast at such election, the total votes recorded or tabulated on such device or equipment, despite the fact that such vote may be erroneous, shall be accepted in the canvass and in the recount as the votes cast.

(2) If it is necessary for the board of canvassers to test any vote recording device or automatic tabulating equipment counting device for its mechanical accuracy in recording or tabulating the votes cast at such election, such test shall be conducted by the clerk of the county court in the presence of the board of canvassers and of any candidate or his party representative. After the completion of such test the clerk will then and there prepare and file a statement in writing giving in detail the result of the examination and test.

§3-4A-30. Adjustments in voting precincts where electronic voting system used.

(a) The provisions of section five, article one of this chapter, relating to the number of registered voters in each precinct, shall apply to and control in precincts in counties in which electronic voting systems have been adopted, except that the maximum number of registered voters shall be one thousand five hundred per precinct. The county commissions of such counties, subject to other provisions of this chapter with respect to the altering or changing of the boundaries of voting precincts, may change the boundaries of precincts or consolidate precincts as practicable, to achieve the maximum advantage from the use of electronic voting systems.

(b) The county commission may, in the urban centers of any county adopting an electronic voting system, designate a voting place outside the boundaries of a precinct, provided such voting place is in a public building of sufficient size and in an adjoining precinct. In such event, more than one precinct may vote in any such public building. Upon combination of adjoining precincts pursuant to this subsection, the county commission shall: (1) Publish its order combining the precincts in the same manner as an order of consolidation pursuant to section seven, article one of this chapter; and (2) cause its order to be published with each sample ballot publication required by this chapter.

§3-4A-31. Use of electronic voting systems in municipal elections.

The county court of any county which has adopted the use of an electronic voting system is hereby authorized to make such system available to any municipality in, or partly in, such county for use in elections conducted by such municipality, and the use of the electronic voting system by such municipality shall be upon such terms and conditions as may be agreed upon between the county court and the municipality.

WV Legislature

§3-4A-32. Applicability of general laws relating to elections.

Except as modified by this article, the general laws applying to regular, special and primary elections shall apply to elections conducted with the use of electronic voting systems.

If it shall be impracticable for the county court of any county, after the adoption of an electronic voting system by such county, to supply the necessary vote recording devices to each precinct of such county for use in any election, the holding of any election in such precincts, which have not been supplied with vote recording devices shall be governed by the general laws with respect to conducting a regular, special and primary election by the use of printed ballots or the laws with respect to conducting such election by the use of voting machines if such machines are used.

§3-4A-33. Tampering with vote-recording devices, electronic poll books, ballot labels, ballot or ballot cards, program decks, standard validation test decks or other automatic tabulating equipment; other dishonest practices; attempts; penalty.

(a) Any person not an election officer or other public official who shall tamper or attempt to tamper with any vote-recording device, electronic poll book, ballot label, ballot or ballot card, program deck, standard validation test deck or automatic tabulating equipment or in any way intentionally impair or attempt to impair their use and any person who shall be guilty of or shall attempt any dishonest practice upon any such devices or equipment, or with or by their use, shall be deemed guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one year nor more than ten years or fined not less than \$5,000, or both.

(b) Any clerk of a county commission, county commissioner, ballot commissioner, election commissioner, or poll clerk, or any custodian, technician or other public official authorized to take part in the holding of an election or in preparing for an election, who, with intent to cause or permit any vote-recording device, electronic poll book, program deck, standard validation test deck or other automatic tabulating equipment to fail to record, test or tabulate correctly all votes cast thereon or tabulated therewith, tampers with or disarranges such device in any way, or any part or appliance thereof, or who causes or consents to the use of such device or equipment for vote recording, testing or tabulating at any election with knowledge of the fact that the same is not in order, or not perfectly set and adjusted so that it will correctly record, test or tabulate all votes cast or who, with the purpose of defrauding or deceiving any voter or of causing it to be doubtful for what ticket or candidate or candidates or proposition any vote is cast, or of causing it to appear on said device or devices that the votes cast for one ticket, candidate or proposition, were cast for another ticket, candidate or proposition, removes, changes or mutilates any ballot, ballot card or ballot label on said device or any part thereof, or does any other thing intended to interfere with the validity or accuracy of the election, shall be deemed guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one year nor more than ten years, or fined not less than \$5,000 or both.

§3-4A-34. Wilful neglect of duty by officials; penalties.

Any public officer or election officer upon whom any duty is imposed by this article who shall wilfully omit or neglect to perform such duty, or who shall do any act prohibited in this article for which punishment is not otherwise provided herein, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than \$500 nor more than \$1,000, or imprisonment in the county jail for not less than sixty days nor more than one year, or both, in the discretion of the court.