

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1949



ENROLLED

Com. Sub For

HOUSE BILL No. 9

(By Mr. *From. on The Judiciary*)



PASSED March 12 1949

In Effect From Passage



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ENROLLED
COMMITTEE SUBSTITUTE FOR
House Bill No. 9

(Originating in the Committee on the Judiciary)

[Passed March 12, 1949; in effect from passage.]

AN ACT to amend chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be numbered article five-a, providing for the adoption, acquisition and use of voting machines in regular, special and primary elections; authorizing methods of leasing or purchasing of such machines; describing the equipment and ballot labels to be used, the manner of holding elections wherein such voting machines are used, and the canvass of the results thereof; and imposing penalties for violations thereof.

Be it enacted by the Legislature of West Virginia:

That chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, numbered five-a, to read as follows:

Article 5-a. Use of Voting Machines.

Section 1. *Use of Voting Machines Authorized.*—Voting machines may be used for the purpose of registering or recording and computing votes cast in regular, special and primary elections, provided that the use thereof shall be governed by the terms, conditions, restrictions and limitations imposed by this article.

Sec. 2. *Voting Machines; How Adopted.*—Voting machines may be adopted for use in general, primary and special elections in any county by either of the following procedures, and not otherwise:

(1) By a majority of the members of the county court voting to adopt the same at a meeting regularly called in regular or special session: *Provided, however,* 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 court shall enter an order of its intention to adopt the use of voting machines, it shall thereafter forthwith cause to be published a certified copy of such order in some newspaper of general circulation in such county. Such notice shall be published at least once a week for four

16 successive weeks beginning not less than twenty days
17 after the entry of such order, and a copy of such order
18 shall be posted at the front door of the courthouse and
19 at least three other public places in such county for a like
20 period. Such county court shall not adopt the use of
21 voting machines until ninety days after the entry of
22 such order of its intention to adopt the same. Promptly
23 after the expiration of ninety days after the entry of
24 such order of intention to adopt the use of voting
25 machines, if no petition has theretofore been filed with
26 such county court requesting a referendum on the ques-
27 tion of adoption of voting machines as hereinafter pro-
28 vided, such county court shall enter a final order adopting
29 voting machines, and voting machines shall thereby be
30 adopted.

31 If five per cent or more of the registered voters of
32 such county shall sign a petition requesting that voting
33 machines be not adopted for use in such county and
34 such petition be filed with the county court of such
35 county within ninety days after the entry of such order
36 of intention to adopt the use of voting machines, such

37 county court shall submit to the voters of such county
38 at the next general or primary election, whichever shall
39 first occur, the question: "Shall voting machines be
40 adopted in _____ County?" If this question
41 be answered in the affirmative by a majority of the
42 voters in such election upon the question, voting
43 machines shall thereby be adopted. If such question shall
44 not be answered in the affirmative by such majority,
45 the use of voting machines shall not be adopted.

46 (2) By the affirmative vote of a majority of the
47 voters of such county voting upon the question of the
48 adoption of voting machines in such county. If five per
49 cent or more of the registered voters of such county
50 shall sign a petition requesting the adoption of voting
51 machines for use in such county, and such petition be
52 filed with the county court of such county, such county
53 court shall submit to the voters of such county at the
54 next general or primary election, following by not less
55 than ninety days the date of the filing of such petition,
56 the question: "Shall voting machines be adopted in
57 _____ County?" If this question be answered

58 in the affirmative by a majority of the voters of such
59 county voting upon the question, voting machines shall
60 thereby be adopted. If such question shall not be an-
61 swered in the affirmative by such majority, the use of
62 voting machines shall not be adopted.

63 If at any time after the adoption of voting machines
64 in any county as herein provided, five per cent or more
65 of the registered voters of such county shall sign a pe-
66 tition requesting that the use of voting machines be ter-
67 minated, and such petition be filed with the county
68 court of such county, such county court shall submit
69 to the voters of such county at the next general or pri-
70 mary election following by not less than ninety days
71 the date of the filing of such petition. The question:
72 "Shall the use of voting machines in _____
73 County be terminated?" If this question be answered
74 in the affirmative by a majority of the voters of such
75 county voting upon the question, the use of voting
76 machines in all future elections shall thereby be ter-
77 minated; otherwise, the use of voting machines shall
78 be continued.

79 Any vote pursuant to this section which results in a
80 failure to adopt, or in a termination of, the use of voting
81 machines shall not be construed to preclude any future
82 proceeding by the voters or the county court of any
83 county to adopt or readopt voting machines in a law-
84 ful manner as provided herein.

Sec. 3. *Duty of County Court to Acquire Voting*
2 *Machines.*—If the use of voting machines shall have
3 been adopted as hereinbefore provided, it shall be the
4 duty of the county court of such county to acquire the
5 necessary number of voting machines to supply each
6 election precinct within such county as soon as possible,
7 and to acquire such reserve machine or machines as will
8 be deemed necessary, and to acquire for each machine
9 an instruction model.

10 If it shall be impossible for the county court to sup-
11 ply each election precinct with a voting machine or
12 voting machines for use at the next general election
13 following the adoption of voting machines, as many
14 voting machines shall be supplied for that election and
15 the next succeeding elections as it is possible for the

16 county court to acquire in the manner as hereinafter
17 provided, and the machines so acquired may be used in
18 such election precincts within the county as the county
19 court may direct until it shall be possible to provide
20 the requisite number of voting machines properly to
21 equip all precincts within the county.

Sec. 4. *Voting Machines, Manner in which ac-*
2 *quired.*—Contracts for the purchase or lease of voting
3 machines shall be based on competitive bids. The
4 county court shall solicit sealed bids by sending requests
5 by mail to all known manufacturers and suppliers of
6 voting machines which have been previously approved
7 by the voting machine commission as hereinafter pro-
8 vided. The award of contracts of purchase or lease shall
9 be based on the quality, cost, specifications and suitability
10 of the particular voting machines.

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

15 (1) Guarantee in writing to keep the machine or

16 machines in good working order for five years without
17 additional cost to the county court.

18 (2) Warrant to defend and indemnify the county
19 court against any claim for patent infringement, and
20 in case any machine or machines shall be held to be an
21 infringement of a valid patent, to obtain a license for
22 the use of such patent on the machines sold or leased
23 to the county court or to modify the machines so that
24 the offending infringement is removed without alter-
25 ing the mechanical efficiency or statutory requirements
26 of the machines; all at the sole cost and expense of the
27 supplier of the voting machines.

28 (3) Provide a bond with good corporate surety duly
29 qualified to do business in West Virginia, conditioned
30 upon the due performance of said guaranty and said
31 warranty, in a penal sum to be fixed by the county
32 court.

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

36 (1) disclosing the name and address of, and the

37 amount of any contribution paid or to be paid to
 38 any individual, partnership, corporation or associa-
 39 tion, whether regularly or specially hired for the
 40 purpose, or partly for the purpose, of attempting
 41 to influence directly or indirectly the purchase
 42 or lease of the voting machine represented by the
 43 bid.

44 (2) declaring that no individual, partnership,
 45 corporation or association not disclosed in said affi-
 46 davit shall thereafter be regularly or specially
 47 hired and no contribution shall thereafter be paid
 48 for the purpose or partly for the purpose of at-
 49 tempting to influence directly or indirectly the pur-
 50 chase or lease of the voting machine represented by
 51 the bid.

52 For the purpose of this affidavit, the word "contri-
 53 bution" shall mean the payment, distribution, loan,
 54 advance, deposit, gift of money, property, benefit or
 55 other consideration, or any agreement providing for a
 56 payment, distribution, loan, advance, deposit, or gift

57 of money, property, benefit, or other consideration at
58 any future time.

Sec. 5. *Financing Acquisition of Voting Machines.*

2 —The county court may finance the acquisition of vot-
3 ing machines by any one or any combination of the
4 following methods:

5 (1) By purchasing the same and paying the pur-
6 chase price therefor in cash from funds available from
7 the maximum general levy or from any other lawful
8 source.

9 (2) By leasing the same under written contract of
10 lease, and paying the rentals therefor in cash from
11 funds available from the maximum general levy or
12 any other lawful source.

Sec. 6. *Minimum Requirements of Voting Mach-*
2 *ines.*—A voting machine of particular make and design
3 shall not be approved by the Voting Machine Commis-
4 sion or be purchased, leased, or used, by any county
5 court unless it shall fulfill the following requirements:

6 (1) It shall secure or insure the voter absolute se-
7 crecy in the act of voting, or, at the voter's election,

8 shall provide for open voting.

9 (2) It shall be so constructed that no person except
10 in instances of open voting, as herein provided for, can
11 see or know for whom any voter has voted or is voting,
12 and that no voter or other person can, while the mach-
13 ine is unlocked for operation, see or otherwise ascertain
14 the numerical total of votes cast for any candidate or
15 for or against any question.

16 (3) It shall permit each voter to vote at any elec-
17 tion for all persons and offices for whom and which
18 he is lawfully entitled to vote, whether or not the name
19 of any such person appears on a ballot label as a can-
20 didate; and it shall permit each voter to vote for as many
21 persons for an office as he is lawfully entitled to vote for;
22 and to vote for or against any question upon which he is
23 lawfully entitled to vote.

24 (4) It shall preclude each voter from voting for
25 any person or office or upon any question for whom
26 or which and upon which he is not lawfully entitled
27 to vote and from voting for more persons for any office
28 than he is lawfully entitled to vote for, and from voting

29 for any candidate for the same office and upon any
30 question more than once.

31 (5) It shall permit each voter to deposit, write in,
32 or affix upon devices to be provided for that purpose,
33 ballots containing the names of persons for whom he
34 desires to vote whose names do not appear upon the
35 machine ballot labels.

36 (6) It shall permit each voter to change his vote for
37 any candidate and upon any question appearing upon
38 the ballot labels up to the time when he starts to regis-
39 ter his vote.

40 (7) It shall correctly register and accurately count
41 all votes cast for each candidate and for and against
42 each question appearing upon the ballot labels.

43 (8) It shall permit each voter at any election, other
44 than primary elections, to vote a straight party ticket
45 by one device, and by one device to vote for all can-
46 didates of one party for presidential electors; and to
47 vote a mixed ticket selected from the candidates of
48 any and all parties and from independent candidates.

49 (9) It shall be capable of adjustment by election

50 officers at a primary election so as to permit each
51 voter to vote only for the candidates of the party with
52 which he has declared his affiliation, and so as to pre-
53 clude him from voting for any candidate seeking nom-
54 ination by any other political party, and so as to permit
55 each voter to vote for the candidates, if any, for non-
56 partisan nomination or election.

57 (10) It shall have separate voting devices for can-
58 didates and questions, which shall be arranged in sep-
59 arate rows or columns. It shall also be arranged so
60 that one or more adjacent rows or columns may be
61 assigned to the candidates of each political party at
62 primary elections.

63 (11) It shall have a public counter, or other device,
64 the register of which is visible on the outside of the
65 machine and which shall show the total number of
66 voters who have voted on that machine in the election;
67 also candidate and question counters or other devices
68 which shall not be visible on the outside of the mach-
69 ine when the machine is unlocked for operation, and
70 upon which are registered numerically the total votes

71 cast for each candidate and question appearing on the
72 ballot labels; also a protective counter or other device
73 which will record the cumulative total number of
74 movements of the registering mechanism.

75 (12) It shall be provided with locks and seals by
76 the use of which all movement of the registering mech-
77 anism is prevented, both before the polls are open or
78 before the operation of the machine for an election is
79 begun, and immediately after the polls are closed or
80 after the operation of the machine for an election is
81 completed.

82 (13) It shall have the capacity to contain the names
83 of candidates constituting the tickets of at least nine
84 political parties, and to accommodate the wording of
85 at least fifteen questions.

86 (14) It shall be durably constructed of material of
87 good quality and in a workmanlike manner and in a
88 form which shall make it safely transportable.

89 (15) It shall be so constructed with frames for the
90 placing of ballot labels and with transparent devices
91 for the protection of such labels, that the labels on which

92 are printed the names of candidates and their respective
93 parties, titles of offices, and wording of questions shall
94 be reasonably protected from mutilation, disfigurement
95 or disarrangement.

96 (16) It shall bear a number that will identify it or
97 distinguish it from any other machine.

98 (17) It shall be so constructed that a voter may
99 easily learn the method of operating it and may expe-
100 ditiously cast his vote for all candidates of his choice.

101 (18) It shall be accompanied by a mechanically oper-
102 ated instruction model which shall show the arrange-
103 ment of ballot labels, party columns or rows, and
104 questions.

Sec. 7. Voting Machine Commission Creation and

2 *Duties Of.*—There is hereby created a voting machine
3 commission, to be composed of the secretary of state, and
4 two persons appointed by the governor, by and with the
5 consent of the Senate, who shall be mechanical experts
6 and not members of the same political party. The term
7 of office of such commissioners shall be four years, except
8 that the commissioners appointed by the governor shall

9 be subject to removal at his pleasure, and that any sec-
10 retary of state, in surrendering the duties of his office,
11 shall be succeeded on the commission by the succeeding
12 secretary of state. No member of the commission shall
13 have any interest in any voting machine.

14 Any person or corporation owning or being inter-
15 ested in any voting machine may apply to said Commis-
16 sion to the end that such machine may be examined
17 and a report be made on its accuracy, efficiency, capac-
18 ity, and safety. The mechanical experts of the Com-
19 mission shall examine the machine and make full report
20 thereon to the Secretary of State. They shall state in
21 the report whether or not the machine so examined
22 complies with the requirements of this article and can
23 be safely used by voters at elections under the con-
24 ditions prescribed in this article. If the report be in
25 the affirmative upon said question, the machine shall
26 be deemed approved by the commission and the machine
27 of its make and design may be adopted for use at elec-
28 tions as herein provided. Any form of voting machine
29 not so approved shall not be used at any election.

30 Each of the two mechanical experts on the Commis-
31 sion shall be entitled to two hundred dollars for his
32 compensation and expenses in making such examin-
33 ation and report, and such compensation shall be paid
34 by the person or corporation applying for such exam-
35 ination, which sum shall be paid in advance of making
36 the examination and which sum shall be the sole com-
37 pensation to be received by any such expert for his
38 work hereunder.

Sec. 8. *County Clerk Custodian of Machines.*—

2 When voting machines are acquired by any county
3 court, they shall be immediately placed in the custody
4 of the county clerk, and shall remain in his custody
5 at all times except when in use at an election or when
6 in custody of a court or court officers during contest
7 proceedings. The clerk shall see that the machines are
8 properly protected and preserved from damage or un-
9 necessary deterioration, and shall not permit any un-
10 authorized person to tamper with them. The clerk shall
11 also be charged with the duty of keeping the machines
12 in repair and of preparing the same for voting.

Sec. 9. *Printing of Ballot Labels and Instruction*

2 *Cards.*—The ballot commissioners of any county in which
3 voting machines are to be used in any election shall
4 cause to be printed and ready for use at such election
5 five sets of ballot labels for each precinct in which a
6 machine is to be used. Each such set shall contain
7 the name of each candidate and each question to be
8 voted upon. All ballot labels shall be clearly printed
9 or typed in black ink on clear, white material, of such
10 size as will fit the ballot frames. One set of ballot labels
11 shall be inserted in the machine prior to the delivery
12 of the machine to the polling place as hereinafter pro-
13 vided. Two sets of ballot labels shall be placed in the
14 custody of the election commissioners of each precinct
15 for use in the event the set so inserted in the machine
16 becomes mutilated or damaged. The remaining two
17 sets shall be inserted in or affixed to the facsimile dia-
18 grams, as hereinafter provided.

19 The ballot commissioners shall also cause to be printed
20 a supply of instruction cards and facsimile diagrams
21 to be used as hereinafter provided.

Sec. 10. *Preparation of Machines.*—Upon receiving the printed ballot labels, the county clerk shall place them in the ballot frames of the voting machines in such manner as will most nearly conform to the arrangement prescribed for paper ballots, and as will clearly indicate the party designation or emblem, if any, of each candidate. Each column or row containing the names of the office and candidates for such office shall be so arranged as to indicate clearly the office for which the candidate is running. The ballot labels containing the names of candidates required by law to be rotated within each office division shall be inserted in the ballot frames of the several voting machines to be used in the election in such a manner that each candidate shall appear at the top, the bottom and at such intermediate positions within the proper office division an equal number of times.

The county clerk shall then see that the counters referred to in subsection eleven of section six of this article are set at zero (000) and shall lock the operating device and mechanism and devices protecting the

22 counters and ballot labels. The clerk shall then enter
23 in an appropriate book, opposite the number of each
24 precinct, the identifying or distinguishing number of
25 the specific voting machine to be used in that precinct.

Sec. 11. *Vacancy Filled After Ballots are Printed.*

2 —If a nomination to fill a vacancy be made by a politi-
3 cal committee or the chairman thereof and be certified
4 to the ballot commissioners after the ballot labels to
5 be used at the ensuing election shall have been printed,
6 it shall be lawful for the chairman of the party execu-
7 tive committee for the political division to provide, or
8 cause to be provided and deliver, or cause to be deliv-
9 ered, to the county clerk, a sufficient number of ballot
10 labels containing the name of such candidate: *Provided,*
11 *however,* That such ballot labels conform to the speci-
12 fications as set forth in section nine of this article.
13 If such ballot labels are furnished to the clerk of the
14 county court before the machines are delivered to the
15 election precincts, the clerk, with the advice and con-
16 sent of the ballot commissioners, shall cause such ballot
17 labels to be inserted in the proper ballot frames.

Sec. 12. *Notice to County Court Members and Ballot Commissioners; Examination of Machines.*—Upon completing the preparation of the machines in accordance with the provisions of section ten of this article, and not later than seven days before the day of the election, the county clerk shall notify the members of the county court and the ballot commissioners that the machines are ready for use. Thereupon the members of the county court and the ballot commissioners shall convene at the office of the county clerk, or at such other place wherein the voting machines are stored, not later than five days before the day of the election, and shall examine the machines to determine whether the requirements of section ten of this article have been met. Any candidate, and one representative of each political party having candidates to be voted on at the election, may be present during such examination. If the machines are found to be in proper order, the members of the county court and the ballot commissioners shall endorse their approval in the book in which the county clerk entered the numbers of the machines opposite the numbers of the pre-

22 cincts. The county clerk shall then deliver the keys to
23 the voting machines to the ballot commissioners who shall
24 give a receipt for the keys, which receipt shall contain
25 identification of such keys. Not later than three days be-
26 fore the election the election commissioner of each pre-
27 cinct, who shall have been previously designated by the
28 ballot commissioners, shall attend at the office of the
29 clerks of the circuit and county courts of such county to
30 receive the key or keys to the device covering the reg-
31 istering counters and such other keys as may be neces-
32 sary for the operation of the machine in registering votes,
33 and to receive the other necessary election records, books,
34 and supplies required by law. Such election commission-
35 ers shall receive the per diem mileage rate prescribed by
36 law for this service. Such election commissioners shall
37 give the ballot commissioners a receipt for such keys, rec-
38 ords, books and supplies, and such receipt shall contain
39 identification of such keys. The master key and all other
40 keys shall remain in the possession of the clerk of the
41 county court.

Sec. 13. *Appointment of Election Boards; Instruc-*

tion.—The provisions of section nine of article five and section fifteen of article four of this chapter with respect to the number of election officers in each precinct shall not apply to precincts in counties in which voting machines have been adopted, and the county court of such county shall appoint, subject to all other provisions of section nine of article five and section fifteen of article five of this chapter, a uniform election board, to consist of three election commissioners and two poll clerks, to serve in each precinct.

The county court shall call the necessary meeting or meetings for the instruction of all election officials in the use of voting machines. Such meeting or meetings shall be held and the proper instruction given not less than seven (7) days prior to any election in which voting machines are to be used. No election officer, upon being so notified to appear for instruction, shall fail without just cause to do so. If any officer does so fail to appear, the county court may appoint some other qualified person, and such person, after instruction, shall act in the place of the defaulting

23 officer: *Provided, however,* That if such defaulting of-
24 ficer was appointed by the county court upon the writ-
25 ten recommendation of a county executive committee
26 as provided in section fifteen of article four and in
27 section nine of article five of this chapter, the county
28 court shall give written notice of such default to such
29 county executive committee and appoint a person to
30 take the place of such defaulting person upon the rec-
31 ommendation of such county executive committee. The
32 election officers shall receive the per diem mileage rate
33 prescribed by law for attending such instruction meet-
34 ings.

Sec. 14. *Voting Machine Models and Facsimile Dia-*
2 *grams.*—For the instruction of the voters on any elec-
3 tion day there shall be provided for each polling place
4 one instruction model for each voting machine. Each
5 such instruction model shall be constructed so as to
6 provide a replica of a portion of the face of the voting
7 machine, and shall contain the arrangement of the
8 ballot labels, party columns or rows, office columns or
9 rows, and questions. Fictitious names shall be in-

10 serted in the ballot labels of the models. Such models
11 shall be located on the election officers' tables or in
12 some other place in which the voter must pass to reach
13 the voting machine. Each voter, upon request, before
14 voting, shall be offered instruction by the election of-
15 ficers in the operation of the voting machine by use
16 of the instruction model, and each voter shall be given
17 ample opportunity to operate the model himself.

18 The ballot commissioners shall also provide facsimile
19 diagrams, at least two of which shall be posted on the
20 walls of each polling place. The facsimile diagrams
21 shall be exact diagrams of the face of the voting mach-
22 ines to the end that the voter may become familiar
23 with the location of the parties, offices, candidates and
24 questions as they appear on the voting machine to be
25 used in his precinct. Ballot labels may be affixed to
26 the diagrams to insure that the position of the names of
27 the candidates in each office division shall appear ac-
28 curately on the diagrams of each precinct.

Sec. 15. *Delivery of Machines; Arrangements for*

2 *Voting.*—The county clerk shall deliver or cause to be

3 delivered each voting machine to the polling place
4 where it is to be employed. Such delivery shall be
5 made not less than one hour prior to the opening of
6 the polls. At the time of the delivery of the voting
7 machine the operating device and mechanism and the
8 device covering the registering counters shall be se-
9 curely locked. The election commissioners shall then
10 cause the machine to be arranged in the voting place
11 in such manner that the front of the machine, on which
12 the ballot labels appear, will not be visible, when the
13 machine is being operated, to any person other than
14 the voter if the voter shall elect to close the curtain,
15 screen or hood furnished with the voting machine.

Sec. 16. *Examination of Machine by Election Of-*
2 *ficers Before Voting Starts.*—Before permitting the first
3 voter to vote, the election officers shall examine the
4 machine to ascertain whether it has been operated since
5 the public counters referred to in subsection eleven of sec-
6 tion six of this article were set at zero (000) and to ascer-
7 tain whether the ballot labels are arranged as specified
8 on the facsimile diagram of the precinct. If the machine

9 indicates that it has been operated or if the ballot labels
10 are arranged incorrectly, the officers shall not unlock
11 the operating device or mechanism, but shall imme-
12 diately secure the attendance of one or more members
13 of the county court and one or more of the ballot com-
14 missioners, who shall reset the counters at zero (000)
15 and then relock the device covering the counters, or
16 properly arrange the ballot labels, as the case may be,
17 in the presence of the election officers. If the at-
18 tendance of such members of the county court and
19 ballot commissioners cannot be obtained before the
20 time for opening the polls or within one hour there-
21 after, the election officers shall notify the county
22 clerk of the foregoing facts and obtain from such county
23 clerk a reserve voting machine, and thereafter pro-
24 ceed to conduct the election. Any reserve machine so
25 used, shall be prepared for use by the county clerk or
26 his duly appointed deputy and said reserve machine
27 shall be delivered and examined in the same manner
28 as hereinbefore provided. The machine found to have
29 been operated or provided with incorrect ballot labels

30 shall be returned immediately to the custody of the
31 county clerk who shall then promptly cause such
32 machine to be repaired in order that it may be used
33 as a reserve machine if needed.

Sec. 17. *Machine in Disrepair; Reserve Machine;*
2 *Certifying Result of Election; Extending Time for Vot-*
3 *ing.*—If, during the conduct of an election, a machine
4 becomes in a state of disrepair so that it cannot be
5 operated in a manner that will comply with the pro-
6 visions of this article, the election officers shall lock or
7 seal the machine in such manner as to prevent further
8 voting thereon and shall record the numbers shown
9 by the public counter. Then the election officers shall
10 secure from the county clerk a reserve voting machine,
11 which shall be prepared for use, delivered and exam-
12 ined in the same manner as hereinbefore provided, and
13 shall thereafter proceed to conduct the election. When
14 the polls are closed, both the original and reserve voting
15 machines shall be examined and the votes thereon
16 registered shall be counted as provided in Section
17 twenty-three of this article and the aggregate num-

18 ber of votes cast on both machines for each candi-
19 date and on each question shall be certified as the
20 result of the election in that precinct.

Sec. 18. *Duties of Election Officers; Primary Elec-*
2 *tions; Adjustment of Machine.*—(1) The election of-
3 ficers shall constantly and diligently maintain a watch
4 in order to see that no person votes more than once
5 and to prevent any voter from occupying the voting
6 machine more than five minutes. (2) In primary elec-
7 tions, before a voter is permitted to use the voting
8 machine, the election officer representing the party
9 to which the voter belongs shall adjust the machine
10 so that the voter will be able to vote only for the can-
11 didates who are seeking nomination on the ticket of
12 the party with which the voter is affiliated. (3) If
13 the machine is so constructed as to require adjustment
14 after one person has voted before another person can
15 vote, the election officers shall so adjust it after each
16 person has voted.

Sec. 19. *Assistance to Voters Unable to Read.*—
2 Any person who shall have indicated upon his registra-

3 tion record that he is unable, by means of physical dis-
4 ability, or illiteracy, to write may ask for assistance
5 from two election officers of opposite political affilia-
6 tions to whom he shall thereupon declare his choice of
7 candidates and his position on questions appearing on
8 the ballot labels; such officers, in the presence of the
9 voter and of each other shall thereupon cause such
10 voter's declared choices to be registered by the machine
11 as votes.

Sec. 20. *Absent Voter's Ballots; Recording, Dispo-*
2 *sition.*—When absent voters' ballots have been voted
3 and delivered to the election board of any precinct, the
4 election commissioners shall as time permits proceed
5 to determine the legality of such ballots as prescribed
6 in sections one to fifteen of article six of this chapter,
7 and shall prior to the close of the polls, before sealing
8 the operating lever and before unlocking the counter
9 compartment, vote or record such votes on the voting
10 machine. Such recording of absent voters' ballots shall
11 be done by one of the election commissioners and the
12 act of casting such votes shall be performed in the pres-

13 ence, and under the careful observation and full view,
14 of all members of the precinct election board, and the
15 votes as indicated by the voting pointers shall not be
16 registered until each member of such board is satis-
17 fied that the arrangement of such voting pointers
18 fully carries out the intent of the voter as shown by
19 the cross marks on the paper ballot.

20 After completion of the count, absentee ballots shall
21 be enclosed in a sealed package, properly endorsed, and
22 returned and filed with the statement of returns.

Sec. 21. *Challenged Ballots.*—If the right of any
2 person to vote is challenged in accordance with sec-
3 tion twenty-five, of article five or section 17-A of ar-
4 ticle four of this chapter, such person shall not be per-
5 mitted to cast his vote by the use of the voting machine,
6 but shall be supplied by the election commissioners
7 at the polling place with an official printed ballot pre-
8 pared under section twelve of article four of this chap-
9 ter or section four of article five of this chapter, and
10 such ballot shall be received subject to sections twenty-
11 five (a) and thirty-one (a) of article five or sections

12 17-B and 18-A of article four of this chapter.

Sec. 22. *Other Necessary Equipment and Supplies.*

2 —In addition to the other equipment and supplies re-
3 quired by this article, there shall be provided for each
4 precinct a sufficient number of printed ballots for the
5 use of voters whose right to vote is challenged, and
6 the necessary equipment and supplies for the reception
7 and safe keeping of absentee voters' ballots.

Sec. 23. *Count of Votes: Machine to be Locked and*

2 *Sealed; Announcement of Vote; Return Sheets.*—(1) At
3 the count of the votes in any such precinct, any candidate
4 or his individual representative may witness and check
5 the count of the votes therein.

6 (2) As soon as the polls are closed, and the last voter
7 has voted, the election officers shall immediately lock
8 and seal the operating lever or mechanism of the mach-
9 ine so that the voting and counting mechanism will be
10 prevented from operation, and shall then compare the
11 number of voters, as shown by the public counter of
12 the machine, with the number of those who have voted,
13 as shown by the protective or accumulative counter

14 or device. The election officers of each precinct shall
15 then sign a certificate stating: (a) that the machine
16 has been locked against voting and sealed; (b) the
17 number of voters, as shown by the public counters;
18 (c) the number registered on the protective or ac-
19 cumulative counter or device, if any; and (d) the
20 number or other designation of the voting machine;
21 and such certificate shall be returned by the precinct
22 election officers to the ballot commissioners.

23 (3) The election officers in the presence of any can-
24 didate or his individual representative, if any, shall
25 then make visible the registering counters, and for
26 that purpose shall unlock and open the doors or other
27 covering concealing the same, giving full view of all
28 the counter numbers. The election officers shall, under
29 the scrutiny of such representatives, and in the order
30 of the offices as their titles are arranged on the machine,
31 read and announce, in distinct tones, the results as
32 shown by the counter numbers for each candidate
33 and for and against each question voted on. The
34 counters shall not be read consecutively along the
35 party rows or columns but shall always be read along

36 the office columns or rows, completing the canvass for
37 each office or question before proceeding to the next.
38 The vote as registered shall be entered by the election
39 officers, in ink, on triplicate return sheets, and also on
40 a general return sheet and statement, all of which, after
41 the count is completed, shall be signed by the elec-
42 tion officers. The total vote cast for each candidate,
43 and for and against each question, shall then be com-
44 puted and entered on the general and triplicate return
45 sheets and statement. There shall also be entered on
46 the general return sheet and statement the number of
47 voters who have voted, as shown by the poll books,
48 and the number who have voted on each machine, as
49 shown by the public counters, and also the number
50 registered on the protective counter on each machine
51 immediately prior to the opening of the polls and im-
52 mediately after the closing thereof and sealing of the
53 machine. The number or other designation of each
54 machine used shall also be entered thereon. In the
55 case of primary elections, triplicate return sheets shall
56 be prepared for each party. The registering counters

57 of the voting machines shall remain exposed to view
58 until the returns and all other reports have been fully
59 completed.

60 (4) The proclamation of the results of the votes cast
61 shall be announced distinctly and audibly by one of
62 the election officers, who shall read the name of and
63 votes cast for each candidate, and the votes cast for and
64 against each question submitted. During such proc-
65 lamation ample opportunity shall be given to any per-
66 son lawfully present to compare the results so an-
67 nounced with the counter dials of the machine, and
68 any necessary corrections shall then and there be made
69 by the election officers, after which the doors or other
70 cover of the voting machine shall be closed and locked
71 and the return sheets shall be signed by each of the
72 election officers. If any election officers shall decline
73 to sign such return, he shall state his reason therefor
74 in writing, and a copy thereof, signed by him, shall
75 be enclosed with such return. Each of the return sheets
76 shall be enclosed in a separate envelope, which shall
77 be securely sealed with sealing wax, or other sealing

78 material, and each of the election officers shall write
79 his or her name across the fold of the envelope. One
80 of the triplicate returns shall be directed and delivered to
81 the clerk of the county court of the county in which the
82 election is being held, one to the circuit court clerk of
83 such county and one to the Secretary of the State at
84 Charleston, West Virginia, and the general return sheet
85 and statement shall be directed and immediately de-
86 livered to the clerk of the county court of such county.
87 The envelope shall have endorsed thereon a certifi-
88 cate of the election officers, stating the number of
89 the machine, the precinct where it has been used, the
90 number of the seal, and the number registered on the
91 protective counter at the close of the polls.

92 (5) As soon as possible after the completion of
93 the count, the election officers shall return to the county
94 court and the ballot commissioners the keys to the vot-
95 ing machine received and receipted for by them, and
96 the clerk of the county court shall have the voting
97 machine properly boxed or securely covered and re-
98 moved from the polling place to a proper and secure
99 place of storage.

Sec. 24. *Form of Return Sheets; Posting Results of Election; Delivery of Return Sheets.*—The general return sheet, triplicate return sheets, and statement, shall be printed to conform with the make of voting machine used. The designating number and letter, if any, on the counter for each candidate shall be reprinted thereon opposite the candidate's name. Immediately after the vote has been ascertained, the above mentioned return sheets shall be forthwith delivered to the respective persons to whom they are addressed as provided by the general election laws.

Sec. 25. *How Long Machine to Remain Locked After Election; Court Order for Examination of Machine; Contested Elections.*—(1) For a period of fifteen days following any primary election, and for a period of thirty days following any general election or special election, the voting machine shall remain locked against voting, except that it may be opened and all the data and figures therein examined, upon the order of any court of competent jurisdiction, or judge thereof, or by direction of any legislative committee author-

11 ized and empowered to investigate and report upon
12 contested elections affected by the use of such machine,
13 and such data and such figures shall be examined by
14 such court, judge or committee in the presence of
15 the officer having the custody of the machine. In the
16 event of a contest of election the court in which such
17 contest is pending or the committee before which con-
18 test is being heard may, upon motion of any party
19 to such contest, issue an order requiring that such
20 voting machines shall remain continuously locked for
21 such further time as may be reasonable or necessary,
22 with due regard for the preparation of such machines
23 for succeeding primary, general or special election, but
24 in no event shall such order compel that the machine
25 remain locked to a time within thirty days next pre-
26 ceding such approaching primary, general or special
27 election.

28 (2) During the period when such machine is re-
29 quired to be kept locked, the keys thereto shall remain
30 in the possession of the county court and ballot com-
31 missioners. After such period, it shall be the duty

32 of the county court and ballot commissioners to re-
33 turn such keys to the clerk of the county court.

Sec. 26. *Discrepancy in Returns, Recanvass of*
2 *Votes; Notices Required; Correction of Result.*—When-
3 ever it appears that there is a discrepancy in the re-
4 turns of any precinct, or it is alleged in a petition of
5 three voters of any precinct, verified by affidavit, that
6 an error, although not apparent on the face of the re-
7 turns, has been committed therein, the canvassing boards
8 shall summon the officers of election of the precinct,
9 and such officers, in the presence of the board of can-
10 vassers, shall make a record of the number of the seal
11 upon the voting machine, and, without unlocking the
12 machine against voting, shall recanvass the vote cast
13 thereon. Before causing such recanvass, the Board of
14 Canvassers shall give notice in writing to the county
15 clerk and to each candidate, and to the chairman of
16 the county executive committee of each party af-
17 fected by the canvass, and each such candidate may be
18 present in person, or by attorney, and each of such
19 parties may send two representatives to be present at

20 such recanvass. If, upon such recanvass, it is found
21 that the original canvass of the returns has been cor-
22 rectly made from the machine, and that the discrep-
23 ancy still remains unaccounted for, the Board of Can-
24 vassers with the assistance of the county clerk, in the
25 presence of the ballot commissioners and the candi-
26 dates and their representatives who may be present,
27 shall unlock the voting and counting mechanism of
28 the machine, and shall proceed thoroughly to examine
29 and test the machine to determine and reveal the true
30 cause, if any, of the discrepancy in returns from such
31 machine. Each registering counter shall be reset at
32 zero (000) before it is tested, after which it shall be
33 operated at least one hundred times. After the com-
34 pletion of such examination and test, the county clerk
35 shall then and there prepare a statement, in writing,
36 giving in detail the result of the examination and test,
37 and such statement shall be witnessed by the persons
38 present, and shall be filed with the Board of Can-
39 vassers. But the votes as registered on such machine
40 shall nevertheless be accepted on the canvass as votes
41 cast.

Sec. 27. *Number of Voters in Precinct.*—The provisions of section ten of article one of this chapter with respect to the number of voters to be contained in each precinct shall not apply to precincts in counties in which voting machines have been adopted and the county courts of such county, 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 voting machines.

Sec. 28. *Tampering or Impairing the Use of Voting Machines; Penalty for.*—Any person not an election officer or other public official who shall tamper or attempt to tamper with such voting machines, or in any way intentionally impair or attempt to impair its use, and any such person who shall be guilty of or shall attempt any dishonest practice upon any such voting machine, or with or by its use, shall be deemed guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for not less than one year

11 nor more than ten years.

Sec. 29. *Tampering or Disarranging of Voting Machine*
2 *by Election Officials and Public Officers; Penalty For.—*
3 Any clerk of a county court, county commissioner, ballot
4 commissioner, election commissioner, or poll clerk, or
5 any custodian, technician, or other public official author-
6 ized to take part in the holding of an election or in pre-
7 paring for an election, who, with intent to cause or permit
8 any voting machine to fail to register correctly all votes
9 cast thereon, who tampers with or disarranges such ma-
10 chine in any way, or any part or appliance thereof, or
11 who causes or consents to the use of said machine for
12 voting at any election with knowledge of the fact that
13 the same is not in order, or not perfectly set and adjusted
14 so that it will correctly register all votes cast thereon, or
15 who, with the purpose of defrauding or deceiving any
16 voter or of causing it to be doubtful for what ticket or
17 candidate or candidates or proposition any vote is cast,
18 or of causing it to appear on said machine that the votes
19 cast for one ticket, candidate or proposition, were cast for
20 another ticket, candidate or proposition, removes, changes

21 or mutilates any ballot label on said machine or any part
22 thereof, or does any other thing intended to interfere
23 with the validity or accuracy of the election, shall be
24 deemed guilty of a felony and upon conviction thereof
25 shall be confined in the penitentiary not less than one
26 year nor more than ten years.

Sec. 30. *False Swearing or Failure to Disclose Facts in*
2 *Affidavit by Person Soliciting Voting Machine Bid; Pen-*
3 *alty.*—Any person who shall knowingly or willfully make
4 any false or fraudulent statement, or who shall knowingly
5 or willfully fail to disclose any material fact in the affi-
6 davit required by subsection four of section four of this
7 article to be filed by such party or parties submitting bids
8 to a county court for the sale or lease of voting machines,
9 shall be guilty of a felony, and, upon conviction thereof
10 shall be punished by a fine of not less than one thousand
11 dollars nor more than five thousand dollars or imprison-
12 ment in the state penitentiary for not less than one year
13 nor more than three years, or both, in the discretion of
14 the court.

15 In construing this section, the term "person" shall in-

16 clude an individual, partnership, committee, association,
17 and any other organization or group of persons.

Sec. 31. *Willful Neglect of Duty by Election Officer;*
2 *Penalty.*—Any public officer or election officer upon whom
3 any duty is imposed by this article and who shall willfully
4 omit or neglect to perform such duty, or who shall do
5 any act prohibited in this article for which punishment is
6 not otherwise provided herein, shall be guilty of a mis-
7 demeanor, and, upon conviction thereof shall be punished
8 by a fine of not less than five hundred dollars nor more
9 than one thousand dollars, or imprisonment in the county
10 jail for not less than sixty days nor more than one year,
11 or both, in the discretion of the court.

Sec. 32. *General Law Applicable to Voting Machines.*—
2 Except as modified by this article, the general laws apply-
3 ing to regular, special and primary elections shall apply
4 to elections conducted with the use of voting machines.
5 If it shall be impracticable for the county court of any
6 county, after the adoption of voting machines by such
7 county, to supply the necessary voting machines to each
8 precinct of such county for use in any election, the hold-

9 ing of any election in such precincts which have not been
10 supplied with voting machines, shall be governed by the
11 general laws with respect to conducting a regular, special
12 and primary election by the use of printed ballots.

Sec. 33. *Use of Voting Machines Authorized in Municipal Elections.*—The county court of any county which
2 has adopted the use of voting machines is hereby author-
3 ized to make such machines available to any municipality
4 in, or partly in, such county for use in elections conducted
5 by such municipality, and the use of voting machines by
6 such municipality shall be upon such terms and conditions
7 as may be agreed upon between the county court and the
8 municipality.

Sec. 34. *Severability, if held Unconstitutional.*—If any
2 section, subsection, paragraph, sentence, or clause of this
3 article is for any reason held invalid or to be unconstitu-
4 tional, such decision shall not affect the remaining portion
5 of this article, or any section or part thereof.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Forest L. McMur
Chairman Senate Committee

Robert Matthews
Chairman House Committee

Originated in the House of Delegates

Takes effect From passage.

Howard Myers
Clerk of the Senate

J. G. Schiff
Clerk of the House of Delegates

W. Augustus Sheraton
President of the Senate

U. E. Shumway
Speaker House of Delegates

The within APPROVED this the 18th
day of MARCH, 1949.

Okuy L. Patterson
Governor.



Filed in the Office of the Secretary of State

of West Virginia

MAR 18 1949
D. PITT O'BRIEN,
SECRETARY OF STATE