

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1969



ENROLLED

HOUSE BILL No. 513

(By Mr. Watson and Mr. Seibert)



PASSED March 7, 1969

In Effect Ninety days from Passage



FILED IN THE OFFICE
JOHN D. ROCKEFELLED, IV
SECRETARY OF STATE

THIS DATE 3-17-69

513

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(By MR. WATSON and MR. SEIBERT)

[Passed March 7, 1969; in effect ninety days 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, designated article four-a, relating to electronic voting systems and the use 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, designated article four-a, to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

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

1 Electronic voting systems may be used for the pur-
2 pose of registering or recording and computing votes

3 cast in general, special and primary elections, provided
4 that the use thereof shall be governed by the terms,
5 conditions, restrictions and limitations imposed by this
6 article.

§3-4A-2. Definitions.

1 As used in this article, unless otherwise specified:

2 (a) "Automatic tabulating equipment" means all ap-
3 paratus necessary to electronically count votes recorded
4 on ballot cards and tabulate the results;

5 (b) "Ballot card" means a tabulating card or paper
6 on which votes may be recorded by means of perforat-
7 ing or marking in electronic sensitized ink or pencil;

8 (c) "Ballot labels" means the cards, papers, booklet,
9 pages or other material showing the names of offices
10 and candidates and the statements of measures to be
11 voted on, which are placed on the vote recording de-
12 vice;

13 (d) "Counting center" means one or more facilities
14 equipped with suitable and necessary automatic tabu-
15 lating equipment, selected by the county court, for the
16 electronic counting of votes recorded on ballot cards;

17 (e) "Electronic voting system" is a means of con-
18 ducting an election whereby votes are recorded on bal-
19 lot cards by means of marking with electronic sensitized
20 ink or perforating, and such votes are subsequently
21 counted by automatic tabulating equipment at one or
22 more counting centers; and

23 (f) "Vote recording device" means equipment in
24 which ballot labels and ballot cards are placed to allow
25 a voter to record his vote.

§3-4A-3. Procedure for adopting electronic voting systems.

1 An electronic voting system may be adopted for use
2 in general, primary and special elections in any county
3 by either of the following procedures, and not other-
4 wise:

5 (1) By a majority of the members of the county court
6 voting to adopt the same at a meeting regularly called
7 in regular or special session: *Provided*, That such meet-
8 ing shall be held not less than six months prior to a
9 general election or six months prior to a primary elec-
10 tion. If at such meeting, such county court shall enter
11 an order of its intention to adopt the use of an elec-

12 tronic voting system, it shall thereafter forthwith cause
13 to be published a certified copy of such order as a
14 Class II-O legal advertisement in compliance with the
15 provisions of article three, chapter fifty-nine of this code
16 and the publication area for such publication shall be
17 the county involved. The first publication of such order
18 shall not be less than twenty days after the entry of
19 such order. Such county court shall not adopt the use
20 of an electronic voting system until ninety days after the
21 entry of such order of its intention to adopt the same.
22 Promptly after the expiration of ninety days after the
23 entry of such order of intention to adopt the use of
24 an electronic voting system, if no petition has there-
25 tofore been filed with such county court requesting a
26 referendum on the question of adoption of an electronic
27 voting system as hereinafter provided, such county court
28 shall enter a final order adopting the electronic vot-
29 ing system, and the electronic voting system shall there-
30 by be adopted.

31 If five percent or more of the registered voters of
32 such county shall sign a petition requesting that an

33 electronic voting system be not adopted for use in such
34 county and such petition be filed with the county court
35 of such county within ninety days after the entry of
36 such order of intention to adopt the use of an electronic
37 voting system, such county court shall submit to the
38 voters of such county at the next general or primary
39 election, whichever shall first occur, the question: "Shall
40 an electronic voting system be adopted in County?"
41 If this question be answered in the affirmative by a
42 majority of the voters in such election upon the ques-
43 tion, an electronic voting system shall thereby be
44 adopted. If such question shall not be answered in the
45 affirmative by such majority, the use of an electronic vot-
46 ing system shall not be adopted.

47 (2) By the affirmative vote of a majority of the voters
48 of such county voting upon the question of the adop-
49 tion of an electronic voting system in such county. If
50 five percent or more of the registered voters of such
51 county shall sign a petition requesting the adoption of
52 an electronic voting system for use in such county, and
53 such petition be filed with the county court of such

54 county, such county court shall submit to the voters of
55 such county at the next general or primary election,
56 following by not less than ninety days the date of the
57 filing of such petition, the question: "Shall an electronic
58 voting system be adopted in County?" If this
59 question be answered in the affirmative by a majority
60 of the voters of such county voting upon the question,
61 an electronic voting system shall thereby be adopted.
62 If such question shall not be answered in the affirma-
63 tive by such majority, the use of an electronic voting
64 system shall not be adopted.

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

1 If at any time after the adoption of an electronic
2 voting system in any county as herein provided, five
3 percent or more of the registered voters of such county
4 shall sign a petition requesting that the use of an elec-
5 tronic voting system be terminated, and such petition
6 be filed with the county court of such county, such
7 county court shall submit to the voters of such county
8 at the next general or primary election, following by

9 not less than ninety days the date of the filing of such
10 petition, the question: "Shall the use of an electronic
11 voting system in County be terminated?" If
12 this question be answered in the affirmative by a major-
13 ity of the voters of such county voting upon the ques-
14 tion, the use of an electronic voting system in all future
15 elections shall thereby be terminated; otherwise, the
16 use of an electronic voting system shall be con-
17 tinued. Any vote pursuant to this section and the
18 preceding section which results in a failure to adopt,
19 or in a termination of the use of an electronic voting
20 system shall not be construed to preclude any future
21 proceeding by the voters or the county court of any
22 county to adopt or readopt an electronic voting system
23 in a lawful manner as provided herein.

**§3-4A-5. Duty of county court to acquire vote recording de-
vices and use of automatic tabulating equipment
and counting centers; competitive bidding; provi-
sion in some precincts.**

1 If the use of an electronic voting system shall have
2 been adopted as hereinbefore provided, it shall be the
3 duty of the county court of such county to acquire the

4 necessary number of vote recording devices to supply
5 all or part of the election precincts within such county
6 as soon as possible, and to acquire such reserve device
7 or devices as will be deemed necessary. All such acquisi-
8 tion of vote recording devices shall be by sealed com-
9 petitive bidding.

10 If it shall be impossible or impractical for the county
11 court to supply each election precinct with a vote re-
12 cording device or vote recording devices for use at the
13 next election following the adoption of an electronic
14 voting system, as many vote recording devices shall be
15 supplied for that election and the succeeding elections
16 as it is possible or practical for the county court to
17 acquire in the manner as hereinafter provided, and the
18 devices so acquired may be used in such election pre-
19 cincts within the county as the county court may direct
20 until it shall be possible to provide the requisite num-
21 ber of vote recording devices properly to equip all pre-
22 cincts within the county. Where it is impossible or im-
23 practical to supply all of the election precincts within
24 such county with vote recording devices, such vote re-

25 cording devices may be used in combination with ap-
26 proved existing methods of voting as provided in this
27 chapter.

28 It shall be the further duty of the county court of
29 such county to acquire prior to any election in which
30 such electronic voting system is to be used, the use of
31 automatic tabulating equipment approved by the state
32 election commission, for the purpose of counting votes
33 in such election. In addition, the county court of such
34 county shall provide the necessary counting centers for
35 use in said election. Such counting centers shall not
36 be located more than one hundred miles from the county
37 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.**

1 (a) The county court may acquire vote recording
2 devices by any one or any combination of the following
3 methods:

4 (1) By purchasing the same and paying the purchase
5 price therefor in cash from funds available from the
6 maximum general levy or from any other lawful source;
7 and

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

12 (b) The county court may acquire the use of auto-
13 matic tabulating equipment by leasing or renting the
14 same under written contract of lease or rental and pay-
15 ing the rentals therefor in cash from funds available
16 from the maximum general levy or other lawful source.
17 The county court is authorized to accept as a gift the use
18 of suitable automatic tabulating equipment.

19 (c) The county court may also secure a counting
20 center.

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

1 Contracts for the purchase or lease of vote recording
2 devices shall be based on competitive bids. The county
3 court shall solicit sealed bids by sending requests by
4 mail to all known manufacturers and suppliers of vote
5 recording devices which have been previously approved
6 by the state election commission as hereinafter provided.

7 The award of contracts of purchase or lease shall be
8 based on the quality, cost, specifications and suitability
9 of the particular vote recording device, technical services
10 to be provided by the manufacturer, and the cost and
11 availability of automatic tabulating equipment suitable
12 for use in connection with said vote recording devices
13 and the ballot cards used therewith.

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

18 (1) Guarantee in writing to keep the vote record-
19 ing devices in good working order for five years with-
20 out additional cost to the county court.

21 (2) Warrant to defend and indemnify the county
22 court against any claim for patent infringement, and
23 in case any vote recording device or devices shall be held
24 to be an infringement of a valid patent, to obtain a
25 license for the use of such patent on the vote record-
26 ing devices sold or leased to the county court or to
27 modify the devices so that the offending infringement

28 is removed without altering the efficiency or statutory
29 requirements of the devices; all at the sole cost and
30 expense of the supplier of the vote recording devices.

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

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

38 (1) Disclosing the name and address of, and the
39 amount of any contribution paid or to be paid to, any
40 individual, partnership, corporation or association hired
41 regularly and specially for the purpose, or party for
42 the purpose, of attempting to influence directly or in-
43 directly the purchase or lease of the vote recording de-
44 vices represented by the bid.

45 (2) Declaring that no individual, partnership, corpo-
46 ration or association not disclosed in said affidavit shall
47 thereafter be regularly or specially hired and no contri-

48 bution shall thereafter be paid for the purpose or partly
49 for the purpose of attempting to influence directly or
50 indirectly the purchase or lease of the vote recording
51 devices represented by the bid.

52 For the purpose of this affidavit, the word "contribu-
53 tion" shall mean payment, distribution, loan, advance,
54 deposit, gift of money, property, benefit or other consid-
55 ation, or any agreement providing for a payment,
56 distribution, loan, advance, deposit, or gift by money,
57 property, benefit, or other consideration at any future
58 time.

59 Any person who shall knowingly or wilfully make
60 any false or fraudulent statement, or who shall know-
61 ingly or wilfully fail to disclose any material fact in
62 the affidavit required by this section shall be guilty
63 of a felony, and, upon conviction thereof, shall be pun-
64 ished by a fine of not less than one thousand dollars
65 nor more than five thousand dollars or imprisonment
66 in the state penitentiary for not less than one year
67 nor more than three years, or both, in the discretion of
68 the court.

69 In construing this section, the term "person" shall

70 include an individual, partnership, committee, associa-
71 tion, 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.**

1 Any person or corporation owning or being interested
2 in any electronic voting system may apply to the state
3 election commission to the end that such system may
4 be examined and a report be made on its accuracy,
5 efficiency, capacity, and safety. The state election com-
6 mission shall appoint two qualified experts who are not
7 members of the same political party to examine the
8 system and make full reports thereon to the commission
9 within thirty days from the date of the application.
10 They shall state in the report whether or not the system
11 so examined complies with the requirements of this
12 article and can be safely used by voters at elections
13 under the conditions prescribed in this article. If the
14 report be in the affirmative on said question, the system
15 may be approved by the commission and, if approved
16 by the commission, a system of its make and design may
17 be adopted for use at elections as herein provided. Any

18 form of electronic voting system not so approved shall
19 not be used at any election. Each of the two qualified
20 experts appointed by the commission shall be entitled
21 to two hundred dollars for his compensation and ex-
22 penses in making such examination and report, and such
23 compensation shall be paid by the person or corporation
24 applying for such examination, which sum shall be paid
25 in advance of making the examination and which sum
26 shall be the sole compensation to be received by any
27 such expert for his work hereunder.

§3-4A-9. Minimum requirements of electronic voting systems.

1 An electronic voting system of particular make and
2 design shall not be approved by the state election com-
3 mission or be purchased, leased, or used, by any county
4 court unless it shall fulfill the following require-
5 ments:

6 (1) It shall secure or insure the voter absolute
7 secrecy 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,

11 can see or know for whom any voter has voted or is
12 voting;

13 (3) It shall permit each voter to vote at any elec-
14 tion for all persons and offices for whom and which
15 he is lawfully entitled to vote, whether or not the name
16 of any such person appears on a ballot label as a can-
17 didate; and it shall permit each voter to vote for as
18 many persons for an office as he is lawfully entitled
19 to vote for; and to vote for or against any question upon
20 which he is lawfully entitled to vote and the automatic
21 tabulating equipment used in such electronic voting
22 systems shall reject choices recorded on any ballot card
23 or paper ballot if the number of such choices exceeds
24 the number to which a voter is entitled;

25 (4) It shall permit each voter to deposit, write in,
26 or affix upon devices to be provided for that purpose,
27 ballots containing the names of persons for whom he
28 desires to vote whose names do not appear upon the
29 ballot labels;

30 (5) It shall permit each voter to change his vote
31 for any candidate and upon any question appearing upon

32 the ballot labels up to the time when his ballot or ballot
33 card is deposited in the ballot box;

34 (6) It shall correctly record and accurately count
35 all votes cast for each candidate and for and against
36 each question appearing upon the ballots or ballot
37 labels;

38 (7) It shall permit each voter at any election other
39 than primary elections, by one mark or punch to vote
40 a straight party ticket, and by one mark or punch to
41 vote for all candidates of one party for presidential
42 electors; and to vote a mixed ticket selected from the
43 candidates of any and all parties and from independent
44 candidates;

45 (8) It shall permit each voter in primary elections
46 to vote only for the candidates of the party with which
47 he has declared his affiliation, and preclude him from
48 voting for any candidate seeking nomination by any
49 other political party, permit him to vote for the candi-
50 dates, if any, for nonpartisan nomination or election,
51 and permit him to vote on public questions;

52 (9) It shall be provided with means for sealing the

53 vote recording device to prevent its use and to prevent
54 tampering with ballot labels, both before the polls are
55 open or before the operation of the vote recording device
56 for an election is begun and immediately after the polls
57 are closed or after the operation of the vote recording
58 device for an election is completed;

59 (10) It shall have the capacity to contain the names
60 of candidates constituting the tickets of at least nine
61 political parties, and to accommodate the wording of
62 at least fifteen questions;

63 (11) It shall be durably constructed of material of
64 good quality and in a workmanlike manner and in a
65 form which shall make it safely transportable;

66 (12) It shall be so constructed with frames for the
67 placing of ballot labels and with suitable means for
68 the protection of such labels, that the labels on which
69 are printed the names of candidates and their respective
70 parties, titles of offices, and wording of questions shall
71 be so reasonably protected from mutilation, disfigure-
72 ment or disarrangement;

73 (13) It shall bear a number that will identify it or
74 distinguish it from any other machine;

75 (14) It shall be so constructed that a voter may easily
76 learn the method of operating it and may expeditiously
77 cast his vote for all candidates of his choice; and

78 (15) It shall be accompanied by a mechanically op-
79 erated instruction model which shall show the arrange-
80 ment of ballot labels, party columns or rows, and ques-
81 tions.

**§3-4A-10. County court clerk custodian of vote recording de-
vices; duties.**

1 When an electronic voting system is acquired by any
2 county court, the vote recording devices shall be im-
3 mediately placed in the custody of the county clerk,
4 and shall remain in his custody at all times except when
5 in use at an election or when in custody of a court or
6 court officers during contest proceedings. The clerk shall
7 see that the vote recording devices are properly pro-
8 tected and preserved from damage or unnecessary deteri-
9 oration, and shall not permit any unauthorized person
10 to tamper with them. The clerk shall also be charged
11 with the duty of keeping the vote recording devices in
12 repair and of preparing the same for voting.

§3-4A-11. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.

1 The ballot commissioners of any county in which an
2 electronic voting system is to be used in any election
3 shall cause to be printed for use in such election the
4 ballots or ballot labels, as appropriate, for the electronic
5 voting system. The ballot labels so printed shall total in
6 number one and one half times the total number of vote
7 recording devices to be used in the several precincts
8 of the county in such election. All such labels shall be
9 delivered to the clerk of the county court at least fifty
10 days prior to the day of the election in which such labels
11 are to be used. The labels shall contain the name of
12 each candidate and each question to be voted upon and
13 shall be clearly printed or typed in black ink on clear
14 white material of such size as will fit the vote recording
15 devices. Arrows may be printed on the ballot labels to
16 indicate the place to punch the ballot card, which may
17 be to the right or left of the name or proposition.

18 The titles of offices may be arranged on the ballot
19 labels in vertical columns or in a series of separate

20 pages, and shall be printed above or at the side of the
21 names of candidates so as to indicate clearly the candi-
22 dates for each office and the number to be elected. In case
23 there are more candidates for an office than can be
24 printed in one column or on one ballot label page, the
25 ballot label shall be clearly marked that the list of
26 candidates is continued on the following column or page,
27 and so far as possible, the same number of names shall
28 be printed on each column or page. The names of can-
29 didates for each office shall be printed in vertical columns
30 or on separate pages, grouped by the offices which they
31 seek.

32 In elections in which voters are authorized to vote
33 for persons whose names do not appear on the ballot
34 card, a separate write-in ballot, which may be in the
35 form of a paper ballot or card, shall be provided if
36 required to permit voters to write in the title of the
37 office and the names of persons whose names are not
38 on the ballot, for whom he wishes to vote.

39 One set of ballot labels shall be inserted in the vote
40 recording device prior to the delivery of such device

41 to the polling place. The remainder of such ballot labels
42 for each device shall be retained by the clerk of the
43 county court for use in the event the set so inserted
44 in such device becomes lost, mutilated or damaged.

45 In addition to all other equipment and supplies re-
46 quired by the provisions of this article, the ballot com-
47 missioners shall cause to be printed a supply of
48 instruction cards, sample ballots, facsimile diagrams of
49 the vote recording device ballot and official printed
50 ballots or ballot cards adequate for the orderly conduct
51 of the election in each precinct in their county. In
52 addition they shall provide all other materials and
53 equipment necessary to the conduct of the election, in-
54 cluding voting booths, appropriate facilities for the
55 reception and safekeeping of ballot cards, the ballots
56 of absent voters and of challenged voters and of such
57 "independent" voters who shall, in primary elections,
58 cast their votes on nonpartisan candidates and public
59 questions submitted to the voters.

§3-4A-12. Ballot label arrangement in vote recording devices; drawing by lot to determine position of candidates for House of Delegates on ballots or ballot labels; adjustment; records.

1 When the ballot labels are printed and delivered to
2 the clerk of the county court, he shall place them in the
3 vote recording devices in such manner as will most
4 nearly conform to the arrangement prescribed for paper
5 ballots, and as will clearly indicate the party designation
6 or emblem of each candidate. Each column row or page
7 containing the names of the office and candidates for
8 such office shall be so arranged as to clearly indicate
9 the office for which the candidate is running. The names
10 of the candidates for each office indicated shall be placed
11 on the ballot.

12 The clerk of the circuit court shall appoint a time at
13 which all candidates for the House of Delegates are to
14 appear in his office for the purpose of drawing by lot
15 to determine where their names will appear on the
16 ballots or ballot labels. The clerk shall give due notice
17 of such time to each such candidate by registered or
18 certified mail, return receipt requested. At the time

19 appointed, all such candidates for the House of Dele-
20 gates shall assemble in the office of such clerk and
21 such candidates shall then proceed to draw by lot to
22 determine where their names shall appear on the ballots
23 or ballot labels. The number so drawn by each such
24 candidate shall determine where his or her name shall
25 appear on the ballots or ballot labels. In the event
26 any candidate or candidates fail to appear at the time
27 appointed, the clerk shall draw for such absent candi-
28 date or candidates in the presence of those candidates
29 assembled, if any, and the number so drawn by the clerk
30 shall determine where the name of any absent candi-
31 date or candidates shall appear on the ballots or ballot
32 labels. The clerk shall then seal the vote recording
33 devices so as to prevent tampering with ballot labels.
34 The clerk shall then enter in an appropriate book,
35 opposite the number of each precinct, the identifying
36 or distinguishing number of the specific vote recording
37 device or devices to be used in that precinct.

§3-4A-13. Inspection of vote recording devices; duties of county court, ballot commissioners and election commissioners; records relating to vote recording devices.

1 When the clerk of the county court has completed
2 the preparation of the vote recording devices, as pro-
3 vided in the next preceding section, and not later than
4 seven days before the day of the election, he shall
5 notify the members of the county court and the ballot
6 commissioners that the devices are ready for use. There-
7 upon the members of the county court and the ballot
8 commissioners shall convene at the office of the clerk
9 or at such other place wherein the vote recording devices
10 are stored, not later than five days before the day of the
11 election, and shall examine the devices to determine
12 whether the requirements of this article have been met.
13 Any candidate, and one representative of each political
14 party having candidates to be voted on at the election,
15 may be present during such examination. If the devices
16 are found to be in proper order, the members of the
17 county court and the ballot commissioners shall endorse
18 their approval in the book in which the clerk entered

19 the numbers of the devices opposite the numbers of the
20 precincts. Not later than three days before the election
21 the election commissioner of each precinct who shall
22 have been previously designated by the ballot commis-
23 sioners, shall attend at the office of the clerks of the
24 circuit and county courts of such county to receive the
25 necessary election records, books and supplies required
26 by law. Such election commissioners shall receive the
27 per diem mileage rate prescribed by law for this service.
28 Such election commissioners shall give the ballot com-
29 missioners a receipt for such records, books and supplies.

**§3-4A-14. Election boards where electronic voting system used;
instruction; vacancies; compensation.**

1 The county court shall appoint a uniform election
2 board, consisting of three election commissioners and
3 two poll clerks, to conduct each election in each precinct
4 of each county in which an electronic voting system has
5 been adopted and is to be used.

6 The county court shall call the necessary meeting or
7 meetings for the instruction of all election officials in
8 the use of the electronic voting system. Such meeting

9 or meetings shall be held and the proper instruction
10 given not less than seven days prior to any election in
11 which the electronic voting system is to be used. No
12 election officer, upon being so notified to appear for in-
13 struction, shall fail without just cause to do so. If any
14 officer does so fail to appear, the county court may
15 appoint some other qualified person, and such person,
16 after instruction, shall act in the place of the defaulting
17 officer. If such defaulting officer were appointed by the
18 county court upon the written recommendation of a
19 county executive committee as provided in article one
20 of this chapter, the county court shall give written
21 notice of such default to such county executive committee
22 and appoint a person to take the place of such defaulting
23 person upon the recommendation of such county execu-
24 tive committee. The election officers shall receive the
25 per diem mileage rate prescribed by law for attending
26 such instruction meetings.

27 Where not inconsistent with the provisions of this
28 section, provisions of article one of this chapter, relating
29 to the appointment of election officers, shall be applicable
30 herein.

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

1 For the instruction of the voters on any election day
2 there shall be provided for each polling place one in-
3 struction model for each vote recording device. Each
4 such instruction model shall be constructed so as to
5 provide a replica of a vote recording device, and shall
6 contain the arrangement of the ballot labels, party col-
7 umns or rows, office columns or rows, and questions.
8 Fictitious names shall be inserted in the ballot labels
9 of the models. Such models shall be located on the
10 election officers' tables or in some other place in which
11 the voter must pass to reach the vote recording device.
12 Each voter, upon request, before voting, shall be offered
13 instruction by the election officers in the operation of
14 the vote recording device by use of the instruction
15 model, and each voter shall be given ample opportunity
16 to operate the model himself.

17 The ballot commissioners shall also provide facsimile
18 ballots or ballot labels, at least two of which, or com-
19 plete sets of which, shall be posted on the walls of each

20 polling place. The facsimile diagrams shall be exact
21 diagrams of the ballot labels or paper ballots to the
22 end that the voter may become familiar with the loca-
23 tion of the parties, offices, candidates and questions as
24 they appear on the vote recording device to be used
25 in his precinct.

26 The ballot commissioners may, with the consent of
27 the county court, or the county court may, prepare and
28 mail to each qualified voter at his address as shown on
29 the registration books a facsimile sample of the ballot or
30 ballot labels for his precinct.

31 In counties where an electronic voting system has
32 been adopted, the legal ballot advertisements required
33 by articles five and six of this chapter, shall consist of
34 a facsimile of the ballot or ballot labels with the names
35 of the candidates and the offices for which they are run-
36 ning shown in their proper positions.

**§3-4A-16. Delivery of vote recording devices; time, arrange-
ment for voting.**

1 The clerk of the county court shall deliver or cause
2 to be delivered each vote recording device to the poll-

3 ing place where it is to be employed. Such delivery
4 shall be made not less than one hour prior to the open-
5 ing of the polls. At the time of the delivery of the vote
6 recording device, it shall be sealed in such a way to
7 prevent its use and tampering with the ballot labels.
8 The election commissioners shall then cause the vote
9 recording device to be arranged in the voting booth in
10 such manner that the front of the vote recording de-
11 vice, on which the ballot labels appear, will not be
12 visible, when the vote recording device is being oper-
13 ated, to any person other than the voter if the voter shall
14 elect to close the curtain, screen or hood to the voting
15 booth.

**§3-4A-17. Check of vote recording devices before use; cor-
rections; reserve vote recording devices.**

1 Before permitting the first voter to vote, the elec-
2 tion officers shall examine the vote recording devices
3 to ascertain whether the ballots or ballot labels are
4 arranged as specified on the facsimile diagram furnished
5 to the precinct. If the ballots or ballot labels are
6 arranged incorrectly, the officers shall immediately

7 notify the clerk of the county court of the foregoing
8 facts and obtain from such clerk a reserve vote recording
9 device, and thereafter proceed to conduct the election.
10 Any reserve vote recording device so used shall be pre-
11 pared for use by the clerk or his duly appointed deputy
12 and said reserve vote recording device shall be delivered
13 and examined in the same manner as hereinbefore pro-
14 vided. The vote recording device found to have been
15 with incorrect ballot labels shall be returned immedi-
16 ately to the custody of the clerk who shall then promptly
17 cause such vote recording device to be repaired in order
18 that it may be used as a reserve vote recording device
19 if needed.

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

1 If, during the conduct of an election, a vote record-
2 ing device becomes in a state of disrepair so that it
3 cannot be operated in a manner that will comply with
4 the provisions of this article, the election officers shall
5 seal it in such manner as to prevent further voting
6 thereon. Then the election officers shall secure from the

7 county clerk a reserve vote recording device, which shall
8 be prepared for use, delivered and examined in the same
9 manner as hereinbefore provided, and shall thereafter
10 proceed to conduct the election.

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

1 (1) The election officers shall constantly and dili-
2 gently maintain a watch in order to see that no per-
3 son votes more than once and to prevent any voter
4 from occupying the voting booth for more than three
5 minutes.

6 (2) In primary elections, before a voter is permitted
7 to occupy the voting booth, the election officer repre-
8 senting the party to which the voter belongs shall di-
9 rect the voter to the vote recording device which will
10 allow the voter to vote only for the candidates who are
11 seeking nomination on the ticket of the party with which
12 the voter is affiliated.

13 (3) The election officers shall issue to each voter
14 when he signs the poll book a card or ticket numbered
15 to correspond to the number on the poll book of such

16 voter, and in the case of a primary election, indicating
17 the party affiliation of such voter, which numbered card
18 or ticket shall be presented to the election officer in
19 charge of the vote recording device.

20 (4) One hour before the opening of the polls the
21 precinct election officers shall arrive at the polling place
22 and set up the voting booths so that they will be in clear
23 view of the election officers, open the vote recording
24 devices, place them in the voting booths, and examine
25 them to see that they have the correct ballots or bal-
26 lot labels by comparing them with the sample ballots, and
27 are in proper working order. They shall open and check
28 the ballots, ballot cards, supplies, records and forms, and
29 post the sample ballots or ballot labels and instructions
30 to voters.

31 (5) Each voter shall be instructed how to operate the
32 vote recording device before he enters the voting booth.

33 (6) Any voter who shall spoil, deface or mutilate the
34 ballot or ballot card delivered to him, on returning
35 the same to the poll clerks, shall receive another in
36 place thereof. Every person who does not vote any
37 ballot or ballot card delivered to him shall, before leav-

38 ing the election room return such ballot or ballot card
39 to the poll clerks. When a spoiled or defaced ballot
40 or ballot card is returned, the poll clerks shall make
41 a minute of the fact on the poll books, at the time, and
42 the word "spoiled" shall be written across the face of
43 the ballot or ballot card and it shall be placed in an
44 envelope for spoiled ballots or ballot cards.

45 Immediately on closing the polls, the election commis-
46 sioners shall ascertain the number of spoiled ballots or
47 ballot cards during the election and the number of bal-
48 lots or ballot cards remaining not voted. The election
49 commissioners shall also ascertain from the poll books
50 the number of persons who voted and shall report,
51 over their signatures, to the clerk of the county
52 court, the number of ballots or ballot cards cast,
53 the number of ballots or ballot cards spoiled dur-
54 ing the election and the number of ballots or ballot
55 cards unused. All unused ballots or ballot cards shall
56 at the same time be returned to the clerk of the county
57 court, who shall immediately destroy them by fire or
58 otherwise.

59 Each commissioner who is a member of an election
60 board which fails to account for every ballot or ballot
61 card delivered to it shall be guilty of a misdemeanor,
62 and, upon conviction thereof, shall be fined not more
63 than one thousand dollars or confined in the county
64 jail for not more than one year, or both.

65 The board of ballot commissioners of each county,
66 or the chairman thereof, shall preserve the ballots
67 or ballot cards that are left over in their hands,
68 after supplying the precincts as provided, until
69 the close of the polls on the day of election, and
70 such ballots or ballot cards, shall then be destroyed
71 by such board, or the chairman thereof, by fire or
72 otherwise.

73 (7) Where ballot cards are used, the voter, after he
74 has marked his ballot card, shall, before leaving the
75 voting booth, place the ballot card inside the envelope
76 provided for this purpose, with the stub extending out-
77 side said envelope, and return it to an election officer
78 who shall remove the stub and deposit the envelope
79 with the ballot card inside in the ballot box. No ballot

80 from which the stub has been detached shall be accepted
81 by the officer in charge of the ballot box, but it shall
82 be marked "spoiled" and placed with the spoiled ballots.

83 (8) The precinct election officers shall prepare a re-
84 port in quadruplicate of the number of voters who have
85 voted, as indicated by the poll books, and shall place
86 two copies of this report in the ballot box, which there-
87 upon shall be sealed with a paper seal signed by the
88 election officers so that no additional ballots may be de-
89 posited or removed from the ballot box. Two election
90 officers of different political parties shall forthwith de-
91 liver the ballot box to the counting center or other
92 designated place and receive a signed numbered receipt
93 therefor, and the time of their departure from the poll-
94 ing place shall be noted on the two remaining copies
95 of the report, which shall be immediately mailed to the
96 clerk of the county court.

97 (9) The poll books, register of voters, unused ballots
98 or ballot cards, spoiled ballots or ballot cards and other
99 records and supplies shall be delivered to the clerk of
100 of the county court.

§3-4A-20. "Independent" voting in primary elections.

1 If at any primary elections nonpartisan candidates for
2 office and public questions are submitted to the voters
3 and on which candidates and questions persons regis-
4 tered as "independent" are entitled to vote, as provided
5 in section eighteen of article two of this chapter, the
6 election officers shall provide a vote recording device
7 so that such "independent" voters may vote only those
8 portions of the ballot or ballot card relating to the
9 nonpartisan candidates and the public questions sub-
10 mitted.

11 If vote recording devices are not available for the
12 "independent" voters, provision shall be made for sealing
13 the partisan section or sections of the ballot or ballot
14 labels on a vote recording device using temporary seals
15 thus permitting the independent voter to vote for the
16 nonpartisan section or sections of the ballot or ballot
17 labels. After the "independent" voter has voted, the
18 temporary seals may be removed and the device may
19 then be used by partisan voters.

20 In lieu of using a vote recording device, such "inde-

21 pendent" voter may request official printed ballots re-
22 lating to such nonpartisan candidates and public ques-
23 tions. Such ballots, when signed on the back by the poll
24 clerks as in other elections, shall be voted and folded
25 by the "independent" voter and shall be delivered to
26 one of the election commissioners who shall secure same
27 in a sealed or locked container until canvassed and
28 counted in the same manner as provided for handling
29 and recording absent voter ballots as provided in section
30 twenty-one of this article.

§3-4A-21. Recording and disposition of absent voters' ballots.

1 When absent voters' ballots have been voted and de-
2 livered to the election board of any precinct, the election
3 commissioners shall as time permits proceed to determine
4 the legality of such ballots as prescribed in article six
5 of this chapter. Without unfolding the absent voters'
6 ballots determined to be legal, the election commissioners
7 shall shuffle and intermingle the same so as to preserve
8 the secrecy of the ballots to the fullest extent prac-
9 ticable, and prior to the close of the polls and before
10 sealing the vote recording device, shall record such

11 ballots on the vote recording device. Such recording of
12 absent voters' ballots shall be done by one of the election
13 commissioners and the act of casting such votes shall
14 be performed in the presence, and under the careful
15 observation and full view, of all members of the precinct
16 election board, and the ballot or ballot card shall not
17 be deposited in the ballot box until each member of
18 such board is satisfied that the votes have been recorded
19 in such a manner as fully carries out the intent of the
20 voter as shown by the cross marks on the paper ballot.

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

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

1 Any duly registered voter, who shall have indicated
2 on his registration record that he is unable, because of
3 illiteracy or physical disability, to write or whose physical
4 disability, in the opinion of the election officers prevents
5 him from operation of the vote recording device, may
6 ask for assistance from two election officers of opposite
7 political party affiliation to whom he shall thereupon

8 declare his choice of candidates and his position on public
9 questions appearing on the ballot or ballot labels. Such
10 election officers, in the presence of the voter and in the
11 presence of each other, shall thereupon cause such voter's
12 declared choices to be recorded on the vote recording
13 device as votes.

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

1 Excepting the election officials acting under authority
2 of sections nineteen, twenty, twenty-one and twenty-two
3 of this article in the conduct of the election, no person
4 other than the voter alone may be in, about or within
5 five feet of the voting booth during the time such voter
6 is in the process of voting at any election, and, during
7 such time, no person may communicate in any manner
8 with the voter and the voter may not communicate
9 with any other person or persons. Any conduct or action
10 of an election official about or around the voting booth
11 while the voter is in the process of voting, in excess of
12 the authority vested in such official by provisions of this
13 article, shall constitute a violation of the provisions
14 hereof. Any person violating any provision or provisions

15 of this section shall be guilty of a misdemeanor, and,
16 upon conviction thereof, shall be fined not exceeding one
17 thousand dollars or be sentenced to imprisonment in the
18 county jail for a period not exceeding twelve months,
19 or, in the discretion of the court, shall be subject to
20 both such fine and imprisonment.

§3-4A-24. Voting by challenged voter.

1 If the right of any person to vote be challenged in
2 accordance with provisions of article one of this chapter
3 relating to the challenging of voters, such person shall
4 not be permitted to cast his vote by use of the vote re-
5 cording device but he shall be supplied by the election
6 officer at the polling place with an official printed ballot
7 of such election. Such ballot shall not be endorsed on
8 the back by the poll clerks but, when voted by the chal-
9 lenged voter, shall have affixed thereto by the poll clerks
10 their statement of information as to the challenge on
11 the form prescribed therefor. Such challenged ballots
12 shall be secured, handled and disposed of as challenged
13 ballots in other elections, as provided in article one of
14 this chapter.

§3-4A-25. Closing polls.

1 As soon as the polls have been closed and the last
2 qualified voter has voted, the vote recording devices shall
3 be sealed against further voting. All unused ballots or
4 ballot cards shall be placed in a container for return
5 to the clerk of the county court.

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

1 Within one week prior to the start of the count of the
2 votes recorded on ballots or ballot cards, the clerk of
3 the county court shall have the automatic tabulating
4 equipment tested to ascertain that it will accurately
5 count the votes cast for all offices and on all measures.
6 Public notice of the time and place of the test shall be
7 given not less than forty-eight hours nor more than two
8 weeks prior thereto by publication of such notice as a
9 Class I legal advertisement, in compliance with the pro-
10 visions of article three, chapter fifty-nine of the code
11 and the publication area for such publication shall be
12 the county involved.

13 The test shall be open to be witnessed by representa-
14 tives of the political parties, candidates, the press and

15 the public. It shall be conducted by processing a pre-
16 audited group of ballots or ballot cards as appropriate,
17 so punched or marked as to record a predetermined
18 number of valid votes for each candidate and on each
19 measure, and shall include for each office one or more
20 ballots which have votes in excess of the number
21 allowed by law in order to test the ability of the auto-
22 matic tabulating equipment to reject such votes. If
23 any error is detected, the cause therefor shall be ascer-
24 tained and corrected and an errorless count shall be
25 made and certified to by the board before the count is
26 started. The tabulating equipment shall pass the same
27 test at the conclusion of the count before the election
28 returns are approved as official. On completion of the
29 count the programs, test materials, and ballots shall be
30 sealed and retained as provided in this chapter for paper
31 ballots.

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

1 (1) All proceedings at the counting center shall be
2 under the direction of the clerk of the county court and
3 shall be conducted under circumstances which allow

4 observation by representatives of each political party and
5 the public, but no persons except those authorized for
6 the purpose shall touch any ballot or ballot card or
7 return. All persons who are engaged in processing and
8 counting of the ballots shall be deputized in writing and
9 take an oath that they will faithfully perform their
10 assigned duties. If any ballot is damaged or defective
11 so that it cannot properly be counted by the automatic
12 tabulating equipment, a true duplicate copy shall be
13 made of the damaged ballot in the presence of witnesses
14 and substituted for the damaged ballot. All duplicate
15 ballots shall be clearly labeled "duplicate," and shall
16 bear a serial number which shall be recorded on the
17 damaged or defective ballot.

18 (2) The returns printed by the automatic tabulating
19 equipment, to which have been added write-in and other
20 valid votes, shall, when certified by the board of can-
21 vassers, constitute the official return of each precinct
22 or election district. Upon completion of the count, the
23 official returns shall be open to the public.

24 (3) If for any reason it becomes impracticable to
25 count all or a part of the ballots with tabulating equip-
26 ment, the board of canvassers may direct that they be
27 counted manually, following as far as practicable the
28 provisions governing the counting of paper ballots.

29 (4) As soon as possible after the completion of the
30 count, the clerk of the county court shall have the vote
31 recording device properly boxed or securely covered
32 and removed from the polling place to a proper and secure
33 place of storage.

**§3-4A-28. Post-election custody and inspection of vote record-
ing devices; canvass and recounts.**

1 (1) The vote recording devices and the ballots and
2 ballot cards shall remain sealed during the canvass of
3 the returns of the election and for a period of seven
4 days after the canvass is finally concluded, during which
5 time any candidate or the chairman of any county execu-
6 tive committee of any political party or their appointed
7 representatives, shall be permitted to examine the vote
8 recording devices and the ballots and ballot cards un-
9 der the supervision of the county court.

10 (2) In canvassing the returns of the election, the
11 board of canvassers shall examine all of the vote re-
12 cording devices, the ballots and ballot cards and the
13 automatic tabulating equipment used in such election
14 and shall determine the number of votes cast for each
15 candidate and for and against each question and by such
16 examination shall procure the correct returns and ascer-
17 tain the true results of the election. Any candidate
18 or his party representative may be present at such
19 examination.

20 (3) If any candidate shall demand a recount of the
21 votes cast at an election, the ballots and ballot cards
22 shall not be reexamined during such recount for the
23 purpose of reascertaining the total number of votes cast
24 for any candidate.

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

1 (1) When during a canvass or a recount of votes in
2 an election it appears to the board of canvassers or if
3 it is so alleged in a petition for a recount, that a vote
4 recording device or piece of automatic tabulating equip-

5 ment used in the election has by reason of mechanical
6 failure or improper or fraudulent preparation or tam-
7 pering, incorrectly recorded or tabulated the actual votes
8 cast or counted on such device or equipment, the board
9 of canvassers shall proceed to determine whether an
10 error has occurred in the vote recorded or counted on
11 such device or equipment. If an error is found, the board
12 of canvassers shall have the cause of the error corrected
13 and the ballots affected recounted so that the election
14 returns will accurately reflect the votes cast at such
15 election if it is possible to accurately correct such error.
16 If the board of canvassers is unable to accurately cor-
17 rect such errors made by said device or equipment and
18 therefore cannot correct the returns to accurately re-
19 flect the actual votes cast at such election, the total
20 votes recorded or tabulated on such device or equipment,
21 despite the fact that such vote may be erroneous, shall
22 be accepted in the canvass and in the recount as the
23 votes cast.

24 (2) If it is necessary for the board of canvassers to
25 test any vote recording device or automatic tabulating

26 equipment counting device for its mechanical accuracy
27 in recording or tabulating the votes cast at such elec-
28 tion, such test shall be conducted by the clerk of the
29 county court in the presence of the board of canvassers
30 and of any candidate or his party representative. After
31 the completion of such test the clerk will then and there
32 prepare and file a statement in writing giving in de-
33 tail the result of the examination and test.

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

1 The provisions of section five of article one of this
2 chapter, relating to the number of registered voters in
3 each precinct, shall not apply to and control in precincts
4 in counties in which electronic voting systems have been
5 adopted and the county courts of such counties, sub-
6 ject to other provisions of this chapter with respect to
7 the altering or changing of the boundaries of voting
8 precincts, may change the boundaries of precincts or
9 consolidate precincts, as practicable, to achieve the maxi-
10 mum advantage from the use of electronic voting sys-
11 tems.

12 The county court may in the urban centers of any
13 county adopting an electronic voting system, designate
14 a voting place without the limits of a precinct, provided
15 such voting place is in a public building, and in an ad-
16 joining precinct. In such event more than one precinct
17 may vote in any such public building.

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

1 The county court of any county which has adopted
2 the use of an electronic voting system is hereby author-
3 ized to make such system available to any municipality
4 in, or partly in, such county for use in elections con-
5 ducted by such municipality, and the use of the elec-
6 tronic voting system by such municipality shall be upon
7 such terms and conditions as may be agreed upon be-
8 tween the county court and the municipality.

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

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

5 If it shall be impracticable for the county court of
6 any county, after the adoption of an electronic voting
7 system by such county, to supply the necessary vote
8 recording devices to each precinct of such county for
9 use in any election, the holding of any election in such
10 precincts, which have not been supplied with vote re-
11 cording devices shall be governed by the general laws
12 with respect to conducting a regular, special and pri-
13 mary election by the use of printed ballots or the laws
14 with respect to conducting such election by the use of
15 voting machines if such machines are used.

**§3-4A-33. Tampering with vote recording devices or automatic
tabulating equipment; other dishonest practices;
attempts; penalty.**

1 Any person not an election officer or other public
2 official who shall tamper or attempt to tamper with any
3 vote recording device or automatic tabulating equip-
4 ment, or in any way intentionally impair or attempt to
5 impair, their use, and any person who shall be guilty
6 of or shall attempt any dishonest practice upon any
7 such device or equipment, or with or by its use, shall
8 be deemed guilty of a felony, and, upon conviction

9 thereof, shall be confined in the penitentiary for not less
10 than one year nor more than ten years.

11 Any clerk of a county court, county commissioner,
12 ballot commissioner, election commissioner, or poll clerk,
13 or any custodian, technician, or other public official
14 authorized to take part in the holding of an election
15 or in preparing for an election, who, with intent to
16 cause or permit any vote recording device or automatic
17 tabulating equipment to fail to record or tabulate cor-
18 rectly all votes cast thereon or tabulated therewith, tam-
19 pers with or disarranges such device in any way, or
20 any part or appliance thereof, or who causes or consents
21 to the use of such device or equipment for vote record-
22 ing or tabulating at any election with knowledge of the
23 fact that the same is not in order, or not perfectly
24 set and adjusted so that it will correctly record or tabu-
25 late all votes cast, or who, with the purpose of defraud-
26 ing or deceiving any voter or of causing it to be doubt-
27 ful for what ticket or candidate or candidates or propo-
28 sition any vote is cast, or of causing it to appear on
29 said device or devices that the votes cast for one ticket,

30 candidate or proposition, were cast for another ticket,
31 candidate or proposition, removes, changes or mutilates
32 any ballot or ballot label on said device or any part
33 thereof, or does any other thing intended to interfere
34 with the validity or accuracy of the election, shall be
35 deemed guilty of a felony, and, upon conviction there-
36 of, shall be confined in the penitentiary not less than one
37 year nor more than ten years.

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

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

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

William Tompkins
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard Meyer
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Frank B. Jackson
President of the Senate

Ivor F. Boiesky
Speaker House of Delegates

The within approved this the 17th
day of March, 1969.

Arch A. Shaue Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/12/69

Time 2:45 p.m.