WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1982

ENROLLED
Committee Substitute for
SENATE BILL NO. 313

(By Mr. Breath and Mr. Palumbo)

PASSED March 13, 1982
In Effect sixty days from Passage
AN ACT to amend and reenact sections two, three, four, five, eight, nine, twelve, thirteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-four, twenty-six, twenty-seven, twenty-eight and thirty-three, article four-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to electronic voting systems generally; providing certain definitions; providing procedure for adopting electronic voting systems; providing procedure for terminating use of electronic voting systems; establishing duty of county commission to acquire vote recording devices, automatic tabulating equipment and to provide a central counting center; providing for approval of electronic voting system by state election commission; authorizing compensation for qualified experts; establishing minimum requirements of electronic voting systems; providing for ballot label arrangement in vote recording devices; when uniform numbering required; drawing by lot to determine position of candidates on ballots or ballot labels; providing for inspection of vote recording devices; prescribing manner of delivery of vote recording devices; requiring examination of vote recording devices before use; providing for use of reserve vote recording devices in place of vote recording device in disrepair; establishing procedures at polling places; providing for control of and accounting for ballots and other duties of
election officers and penalties for violations; establishing procedures for independent voting in primary elections; establishing procedures for absent voter ballots; establishing procedures for challenged ballots; requiring testing of automatic tabulating equipment; providing procedure for central counting center; providing for post-election custody and inspection of vote recording devices, ballot labels, ballot cards and materials; establishing canvass and recount procedures; and defining criminal offenses for tampering with vote recording devices; ballot labels, ballot cards, program decks, standard validation test decks, or other automatic tabulating equipment, and setting forth penalties therefor.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, eight, nine, twelve, thirteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-four, twenty-six, twenty-seven, twenty-eight and thirty-three, article four-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-2. Definitions.
1 As used in this article, unless otherwise specified:
2 (a) “Automatic tabulating equipment” means all apparatus necessary to electronically count votes recorded on ballot cards and tabulate the results;
3 (b) “Ballot card” means a tabulating card or paper on which votes may be recorded by means of perforating or marking in electronic sensitized ink or pencil;
4 (c) “Ballot labels” means the cards, papers, booklet, pages or other material showing the names of offices and candidates and the statements of measures to be voted on, which are placed on the vote recording device;
5 (d) “Central counting center” means a facility equipped with suitable and necessary automatic tabulating equipment, selected by the county commission, for the electronic counting of votes recorded on ballot cards;
6 (e) “Electronic voting system” is a means of conducting an election whereby votes are recorded on ballot cards by means of marketing with electronic sensitized ink or perforating, and such votes are subsequently counted by automatic tabulating equipment at the central counting center;
§3-4A-3. Procedure for adopting electronic voting systems.

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

(1) By a majority of the members of the county commission voting to adopt the same at a special public meeting called for the purpose of said adoption, with due notice thereof published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the county involved: Provided, That such meeting shall be held not less than six months prior to a general election or six months prior to a primary election. If at such meeting, such county commission shall enter an order of its intention to adopt the use of an electronic voting system, it shall thereafter forthwith cause to be published a certified copy of such order as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved. The first publication of such order shall not be less than twenty days after the entry of such order. Such county commission shall not adopt the use of an electronic voting system until six months after the entry of such order of its intention to adopt the same. Promptly after the expiration of six months after the entry of such order of intention to adopt the use of an electronic voting system, if no petition has theretofore been filed with such county commission requesting a referendum on the
question of adoption of an electronic voting system as hereinafter provided, such county commission shall enter a final order adopting the electronic voting system, and the electronic voting system shall thereby be adopted. If five percent or more of the registered voters of such county shall sign a petition requesting that an electronic voting system be not adopted for use in such county and such petition be filed with the county commission of such county within six months after the entry of such order of intention to adopt the use of an electronic voting system, such county commission shall submit to the voters of such county at the next general or primary election, whichever shall first occur, the question: “Shall an electronic voting system be adopted in ..County?” If this question be answered in the affirmative by a majority of the voters in such election upon the question, an electronic voting system shall thereby be adopted. If such question shall not be answered in the affirmative by such majority, the use of an electronic voting system shall not be adopted.

(2) By the affirmative vote of a majority of the voters of such county voting upon the question of the adoption of an electronic voting system in such county. If five percent or more of the registered voters of such county shall sign a petition requesting the adoption of an electronic voting system for use in such county, and such petition be filed with the county commission of such county, such county commission shall submit to the voters of such county at the next general or primary election, following by not less than six months the date of the filing of such petition, the question: “Shall an electronic voting system be adopted in ..County?” If this question be answered in the affirmative by a majority of the voters of such county voting upon the question, an electronic voting system shall thereby be adopted. If such question shall not be answered in the affirmative by such majority, the use of an electronic voting system shall not be adopted: Provided, however, That nothing in this section shall be construed to affect or invalidate the adoption of any electronic voting system by any county in accordance with applicable law prior to the effective date of this section.

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

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

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

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

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

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

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

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

§3-4A-8. Approval of electronic voting system by state election commission; expenses; compensation of persons examining system.

Any person or corporation owning or being interested in any electronic voting system may apply to the state election commission to the end that such system may be examined and a report be made on its accuracy, efficiency, capacity, and safety. Upon the written application of any vendor tendered to the secretary of state or to any clerks in his office in charge of receiving filings for any purpose, it shall be the nondelegable, nondiscretionary duty of the secretary of state to fix a date, time and place, not more than thirty days after the receipt of such application, for a meeting of the state election commission for mutual consideration of such application, and to mail notice thereof by certified mail to each member of the commission.

The state election commission shall appoint two qualified computer experts who are not members of the same political party to examine the system and make full reports thereon to the commission within thirty days from the date of the application. They shall state in the report whether or not the system so examined complies with the requirements of this article and can be safely used by voters at elections under the conditions prescribed in this article. If the report be in the affirmative on said question, the system may be approved by the commission and, if approved by the commission, a system of its make and design may be adopted for use at elections as herein provided: Provided, That under no circumstances shall a system be approved that is not capable of accurately tabulating returns based upon all possible combinations of voting patterns including, but not limited to, crossover voting and in accordance with section five, article six of this chapter.

No electronic voting system shall be used at any election unless it has heretofore or hereafter been approved under this section or its former provisions. Each of the two qualified
computer experts appointed by the commission shall be entitled to reasonable compensation and expenses in making such examination and report, and such compensation shall be paid by the person or corporation applying for such examination, which sum shall be paid in advance of making the examination and which sum shall be the sole compensation to be received by any such expert for his work hereunder.

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

An electronic voting system of particular make and design shall not be approved by the state election commission or be purchased, leased, or used, by any county commission unless it shall fulfill the following requirements:

1. It shall secure or insure the voter absolute secrecy in the act of voting, or, at the voter's election, shall provide for open voting;
2. It shall be so constructed that no person except in instances of open voting, as herein provided for, can see or know for whom any voter has voted or is voting;
3. It shall permit each voter to vote at any election for all persons and offices for whom and which he is lawfully entitled to vote, whether or not the name of any such person appears on a ballot label as a candidate; and it shall permit each voter to vote for as many persons for an office as he is lawfully entitled to vote for; and to vote for or against any question upon which he is lawfully entitled to vote and the automatic tabulating equipment used in such electronic voting systems shall reject choices recorded on any ballot card or paper ballot if the number of such choices exceeds the number to which a voter is entitled;
4. It shall permit each voter to deposit, write in, or affix upon devices to be provided for that purpose, ballots containing the names of persons for whom he desires to vote whose names do not appear upon the ballot labels;
5. It shall permit each voter to change his vote for any candidate and upon any question appearing upon the ballot labels up to the time when his ballot or ballot card is deposited in the ballot box;
6. It shall contain a program deck consisting of cards that are sequentially numbered and capable of tabulating all votes cast in each election;
7. It shall contain two standard validation test decks.
approved as to form and testing capabilities by the state
election commission;

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

(9) It shall permit each voter at any election other than
primary elections, by one mark or punch to vote a straight
party ticket, and by one mark or punch to vote for all
candidates of one party for presidential electors; and to vote a
mixed ticket selected from the candidates of any and all
parties and from independent candidates; and it shall permit
the proper counting, to the fullest extent possible, of all votes
cast for all candidates: Provided, That, in the event of
cross-over voting from a straight party ticket, the system shall
not discard any vote on the straight ticket, unless (i) a
candidate opposite the discarded vote on the straight ticket
has been clearly chosen by the voter, or (ii) the voter, by mark
or punch has clearly indicated which choices on each ticket,
not in excess of the total number permitted, the voter has
made, or (iii) the choices made by the voter are so
contradictory that the voter’s choice is indiscernable, in
which event, all votes for the candidates for such office shall
be discarded;

(10) It shall permit each voter in primary elections to vote
only for the candidates of the party with which he has
declared his affiliation, and preclude him from voting for any
candidate seeking nomination by any other political party,
permit him to vote for the candidates, if any, for nonpartisan
nomination or election, and permit him to vote on public
questions;

(11) It shall be provided with means for sealing the vote
recording device to prevent its use and to prevent tampering
with ballot labels, both before the polls are open or before the
operation of the vote recording device for an election is begun
and immediately after the polls are closed or after the
operation of the vote recording device for an election is
completed;

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

(13) It shall be durably constructed of material of good
quality and in a workmanlike manner and in a form which
shall make it safely transportable;
(14) It shall be so constructed with frames for the placing of ballot labels and with suitable means for the protection of such labels, that the labels on which are printed the names of candidates and their respective parties, titles of offices, and wording of questions shall be so reasonably protected from mutilation, disfigurement or disarrangement;

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

(16) It shall be so constructed that a voter may easily learn the method of operating it and may expeditiously cast his vote for all candidates of his choice, and upon any public question; and

(17) It shall be accompanied by a mechanically operated instruction model which shall show the arrangement of ballot labels, party columns or rows, and questions.

§3-4A-12. Ballot label arrangement in vote recording devices; when uniform numbering required; drawing by lot to determine position of candidates on ballots or ballot labels; sealing of devices; record of identifying numbers.

When the ballot labels are printed and delivered to the clerk of the county commission, he shall place them in the vote recording devices 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 of each candidate. Each column, row or page containing the names of the office and candidates for such office shall be so arranged as to clearly indicate the office for which the candidate is running. The names of the candidates for each office indicated shall be placed on the ballot label and the arrangement of the ballot label shall conform as nearly as practicable to the plan herein given:
13 The secretary of state shall assign a uniform number applicable to all counties using electronic voting for all straight party tickets and for all candidates running for
offices to be voted upon by all of the voters of the state. The
numbers so designated by the secretary of state shall be used
by all counties using electronic voting systems irrespective of
the fact that in one or more such counties the number or
numbers so designated may result in other than strict
sequential ballot arrangement.

After taking into account the numbers so assigned by the
secretary of state to straight party tickets and all candidates
for offices to be voted upon by all the voters of the state, the
clerk of the circuit court shall appoint a time at which all
candidates for the House of Delegates, magistrate and the
office of delegate to a political party national convention are
to appear in his office for the purpose of drawing by lot to
determine where their names will appear on the ballots or
ballot labels. The clerk shall give due notice of such time to
each such candidate by registered or certified mail, return
receipt requested. At the time appointed, all such candidates
for the House of Delegates, magistrate and the office of
delegate to a political party national convention shall
assemble in the office of such clerk and such candidates shall
then proceed to draw by lot to determine where their names
shall appear on the ballots or ballot labels. The number so
drawn by each such candidate shall determine where his or
her name shall appear on the ballots or ballot labels. In the
event any candidate or candidates fail to appear at the time
appointed, the clerk shall draw for such absent candidate or
candidates in the presence of those candidates assembled, if
any, and the number so drawn by the clerk shall determine
where the name of any absent candidate or candidates shall
appear on the ballots or ballot labels. The circuit clerk shall
record the number drawn by each candidate and his name in
an appropriate book. The ballot commissioners shall proceed
to have the ballot labels printed according to the provisions of
this article. After receiving the printed ballot labels, the clerk
of the county commission shall ascertain their accuracy and
proceed to have the ballot labels placed in the vote recording
devices. The clerk of the county commission shall then seal
the vote recording devices so as to prevent tampering with
ballot labels. The clerk of the county commission shall then
enter in an appropriate book, opposite the number of each
precinct, the identifying or distinguishing number of the
specific vote recording device or devices to be used in that
precinct.
§3-4A-13. Inspection of vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to vote recording devices.

When the clerk of the county commission has completed the preparation of the vote recording devices, as provided in the next preceding section, and not later than seven days before the date of the election, he shall notify the members of the county commission and the ballot commissioners that the devices are ready for use. Thereupon the members of the county commission and the ballot commissioners shall convene at the office of the clerk or at such other place wherein the vote recording devices are stored, not later than five days before the day of the election, and shall inspect the devices to determine whether the requirements of this article have been met. Notice of the place and time of such inspection shall be published, no less than three days prior thereto, as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the county involved. Any candidate, and one representative of each political party on the ballot may be present during such examination. If the devices are found to be in proper order, the members of the county commission and the ballot commissioners shall endorse their approval in the book in which the clerk entered the numbers of the devices opposite the numbers of the precincts. The devices shall then be secured in double lock rooms. The county clerk and the president or president pro tempore of the county commission shall each have a key. The rooms shall be unlocked only in their presence and only for the removal of the devices for transportation to the polls. Upon such removal of the devices, the county clerk and president or president pro tempore of the county commission shall certify in writing signed by them that the same were found to be sealed when removed for transportation to the polls.

Not later than three days before the election the election commissioner of each precinct who shall have been previously designated by the ballot commissioners, shall attend at the office of the clerks of the circuit and county courts of such county to receive the necessary election records, books and supplies required by law. Such election commissioners shall receive the per diem mileage rate
prescribed by law for this service. Such election commissioners shall give the ballot commissioners a sequentially numbered written receipt, on a printed form, provided by the clerk of the county commission, for such records, books and supplies. Such receipt shall be prepared in duplicate. One copy of the receipt shall remain with the clerk of the county commission and one copy shall be delivered to the president or president pro tempore of the county commission.

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

The clerk of the county commission shall deliver or cause to be delivered each vote recording device to the polling place where it is to be employed. Such delivery shall be made not less than one hour prior to the opening of the polls and shall be made in the presence of the precinct election commissioners. At the time of the delivery of the vote recording device, it shall be sealed in such a way to prevent its use prior to the opening of the polls and to prevent any tampering with the ballot labels. Immediately prior to the opening of the polls on election day, the seal shall be broken and the vote recording device shall be opened in the presence of the precinct election commissioners, who shall certify in writing signed by them to the clerk of the county commission, that the devices have been delivered in their presence, that the devices were found to be sealed upon such delivery, and that the seals have been broken and the devices opened in their presence. The election commissioners shall then cause the vote recording device to be arranged in the voting booth in such manner that the front of the vote recording device, on which the ballot labels appear, will not be visible, when the vote recording device is being operated, to any person other than the voter if the voter shall elect to close the curtain, screen or hood to the voting booth.

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

Before permitting the first voter to vote, the election commissioners shall examine the vote recording devices to ascertain whether the ballots or ballot labels are arranged as specified on the facsimile diagram furnished to the precinct. If the ballots or ballot labels are arranged incorrectly, the commissioners shall immediately notify the clerk of the
To conduct the election. Any reserve vote recording device so used shall be prepared for use by the clerk or his duly appointed deputy and said reserve vote recording device shall be prepared, inspected and sealed, and delivered to the polling place wherein the seal shall be broken and such device opened in the presence of the precinct election commissioners who shall certify in writing signed by them to the clerk of the county commission, that the reserve vote recording device was found to be sealed upon delivery to the polling place, that the seal was broken and the device opened in their presence at the polling place. The vote recording device found to have been with incorrect ballot labels shall be returned immediately to the custody of the clerk who shall then promptly cause such vote recording device to be repaired, prepared and resealed in order that it may be used as a reserve vote recording device if needed.

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

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

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

(1) The election officers shall constantly and diligently maintain a watch in order to see that no person votes more than once and to prevent any voter from occupying the voting booth for more than five minutes.
(2) In primary elections, before a voter is permitted to occupy the voting booth, the election commissioner representing the party to which the voter belongs shall direct the voter to the vote recording device which will allow the voter to vote only for the candidates who are seeking nomination on the ticket of the party with which the voter is affiliated.

(3) The poll clerk shall issue to each voter when he signs the pollbook a card or ticket numbered to correspond to the number on the pollbook of such voter, and in the case of a primary election, indicating the party affiliation of such voter, which numbered card or ticket shall be presented to the election commissioner in charge of the vote recording device.

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

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

(6) Any voter who shall spoil, deface or mutilate the ballot or ballot card delivered to him, on returning the same to the poll clerks, shall receive another in place thereof. Every person who does not vote any ballot or ballot card delivered to him shall, before leaving the election room, return such ballot or ballot card to the poll clerks. When a spoiled or
defaced ballot or ballot card is returned, the poll clerks shall make a minute of the fact on the pollbooks, at the time, and the word "spoiled" shall be written across the face of the ballot or ballot card and it shall be placed in an envelope for spoiled ballots or ballot cards.

Immediately on closing the polls, the election commissioners shall ascertain the number of spoiled ballots or ballot cards during the election and the number of ballots or ballot cards remaining not voted. The election commissioners shall also ascertain from the pollbooks the number of persons who voted and shall report, in writing signed by them to the clerk of the county commission, any irregularities in the ballot boxes, the number of ballots or ballot cards cast, the number of ballots or ballot cards spoiled during the election and the number of ballots or ballot cards unused. All unused ballots or ballot cards shall at the same time be returned to the clerk of the county commission who shall count them and record the number. If there is no discrepancy, the unused ballots or ballot cards shall be destroyed forthwith, before a representative of each party on the ballot, by fire or otherwise, by the clerk of the county commission or a duly designated deputy clerk. If there is a discrepancy, the unused ballots or ballot cards shall be impounded and secured under double locks until the discrepancy is resolved. The county clerk and the president or president pro tempore of the county commission shall each have a key. Upon resolution of the discrepancy, the unused ballots or ballot cards shall forthwith, before a representative of each party on the ballot, be destroyed by fire or otherwise, by the clerk of the county commission or a duly designated deputy clerk.

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

The board of ballot commissioners of each county, or the chairman thereof, shall preserve the ballots or ballot cards that are left over in their hands, after supplying the precincts as provided, until the close of the polls on the day of election, and such ballots or ballot cards, shall then be destroyed by such board, or the chairman thereof, by fire or otherwise.
(7) Where ballot cards are used, the voter, after he has marked his ballot card, shall, before leaving the voting booth, place the ballot card inside the envelope provided for this purpose, with the stub extending outside said envelope, and return it to an election commissioner who shall remove the stub and deposit the envelope with the ballot card inside in the ballot box. No ballot card from which the stub has been detached shall be accepted by the officer in charge of the ballot box, but such ballot card shall be marked “spoiled” and placed with the spoiled ballots or ballot cards.

(8) The precinct election commissioners shall prepare a report in quadruplicate of the number of voters who have voted, as indicated by the pollbooks, and shall place two copies of this report in the ballot box, which thereupon shall be sealed with a paper seal signed by the election commissioners so that no additional ballots may be deposited or removed from the ballot box. Two election commissioners of different political parties shall forthwith deliver the ballot box to the clerk of the county commission at the central counting center and receive a signed numbered receipt therefor, which receipt shall carefully set forth in detail any and all irregularities pertaining to the ballot boxes and noted by the precinct election officers.

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

(9) The pollbooks, register of voters, unused ballots or ballot cards, spoiled ballots or ballot cards and other records and supplies shall be delivered to the clerk of the county commission, all in conformity with the provisions of this section.

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

1 If at any primary elections, nonpartisan candidates for office and public questions are submitted to the voters and on which candidates and questions persons registered as "independent" are entitled to vote, as provided in section eighteen, article two of this chapter, the election officers shall provide a vote recording device so that such "independent" voters may vote only those portions of the ballot or ballot card
relating to the nonpartisan candidates and the public
questions submitted, or provide a ballot card containing only
provision for voting for those candidates and/or upon those
issues common to the ballots provided to all voters regardless
of political party affiliation.
If vote recording devices are not available for the
"independent" voters, provision shall be made for sealing the
partisan section or sections of the ballot or ballot labels on a
vote recording device using temporary seals, thus permitting
the independent voter to vote for the nonpartisan section or
sections of the ballot or ballot labels. After the "independent"
voter has voted, the temporary seals may be removed and the
device may then be used by partisan voters.
§3-4A-21. Absent voter ballots; issuance, processing and
tabulation.
Absentee voters shall cast their votes on absent voter ballot
cards. If absentee voters shall be deemed eligible to vote in
person at the office of the clerk of the circuit court, in
accordance with the provisions of article three of this chapter,
the clerk of the circuit court of each county shall provide a
vote recording device for the use of such absentee voters. For
all absentee voters deemed eligible to vote an absent voter's
ballot card by mail, in accordance with the provisions of
article three of this chapter, the clerk of the circuit court of
each county shall prepare and issue an absent voter ballot
packet consisting of the following:
(a) One official absent voter ballot card;
(b) One punching tool;
(c) One disposable styrofoam block to be placed behind
the ballot card for voting purposes and to be discarded after
use by the voter;
(d) One absent voter instruction ballot;
(e) One absent voter's ballot envelope No. 1, unsealed,
which shall have no writing thereon and which shall be
identical to the secrecy envelope used for placement of ballot
cards at the polls; and
(f) One absent voter's ballot envelope No. 2, which
envelope shall be marked with the proper precinct number
and shall provide a place on its seal for the absent voter to
affix his signature. Such envelope shall also otherwise
contain the forms and instructions as provided in section five,
article three of this chapter, relating to the absentee voting of
paper ballots.
Upon receipt of an absent voter’s ballot card by mail, the voter shall mark the ballot card with the punch tool and the voter may receive assistance in voting his absent voter’s ballot card in accordance with the provisions of section six, article three of this chapter.

After the voter has voted his absent voter’s ballot card, he shall (1) enclose the same in absent voter’s ballot envelope No. 1, and seal that envelope, (2) enclose sealed absent voter’s ballot envelope No. 1 in absent voter’s ballot envelope No. 2, (3) complete and sign the forms, if any, on absent voter’s ballot envelope No. 2 according to the instructions thereon, and (4) mail, postage prepaid, sealed absent voter’s ballot envelope No. 2 to the clerk of the circuit court of the county in which he is registered to vote, unless the voter has appeared in person, in which event he shall hand deliver the sealed absent voter’s ballot envelope No. 2 to the clerk.

Upon receipt of such sealed envelope, the circuit clerk shall (1) enter onto the envelope such information as may be required of him according to the instructions thereon; (2) enter his challenge, if any, to the absent voter’s ballot; (3) enter the required information into a record of persons making application for and voting an absent voter’s ballot by personal appearance or by mail (the form of which record and information to be entered therein shall be prescribed by the secretary of state); and (4) place such sealed envelope in a secure location in his office, there to remain until delivered to the polling place in accordance with the provisions of this article or, in case of a challenged ballot, to the county commission sitting as a board of canvassers.

When absent voters’ ballots have been delivered to the election board of any precinct, the election commissioners shall, at the close of the polls, proceed to determine the legality of such ballots as prescribed in article three of this chapter. The commissioners shall then open the No. 2 envelope. Without opening the absent voter ballot envelope No. 1, the commissioners shall shuffle and intermingle them and deposit same in the ballot box. The commissioner shall provide an absent voter ballot envelope No. 1 for any voted ballot card which, when opened, has no such envelope.


1 If the right of any person to vote be challenged in accordance with provisions of article one of this chapter
relating to the challenging of voters, and a vote recording device is used that tabulates the vote as an individual vote, such person shall be permitted to cast his vote by use of the vote recording device. He shall be provided with a challenged ballot card and ballot envelopes for the insertion of the ballot card after voting. There shall be an inner envelope marked with the precinct number for the challenged ballot card. There shall also be an outer envelope for the inner envelope and the challenged voter stub, which envelope shall provide a place for the challenged voter to affix his signature on the seal of such outer envelope.

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

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

One week prior to the start of the count of the votes recorded on ballots or ballot cards, the clerk of the county commission shall have the automatic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given not less than forty-eight hours nor more than two weeks prior thereto by publication of such notice as a Class I-0 legal advertisement, in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved.

The test shall be open to representatives of the political parties, candidates, the press and the public. It shall be conducted five times by processing two separate sets of a preaudited group of ballots or ballot cards as appropriate, so punched or marked as to record a predetermined number of valid votes for each candidate and on each measure. It shall include for each multi-candidate office one or more ballot cards which have cross-over votes in order to test the ability of the automatic tabulating equipment to record those votes in accordance with the provisions of this article and applicable law, and it shall include for each office one or more
ballot cards which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. If, in the process of any of the test counts, any error is detected, the cause of such error shall be ascertained and corrective action promptly taken. After the completion of said corrective action, the test counts shall continue, including a retesting of those precincts previously test counted. Prior to the continuation of the testing, the county commission shall certify in writing, signed by them, the nature of the error, the cause thereof and the type of corrective action taken. Such certification shall be recorded in the office of the clerk of the county commission in the miscellaneous record book. Immediately after conclusion of this completed test, a certified duplicate copy of the program deck shall be sent by certified mail to the offices of the state election commission, where it shall be preserved and secured for one year, and made available for comparison or analysis by order of a circuit court or the supreme court of appeals.

The program deck to be used in the election shall immediately be certified by the county commission to be free from error as determined by the test, shall be placed with such certification in a sealed container and kept under individual multiple locks with individual keys for each lock. The number of locks and keys shall be the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his possession. Such sealed container shall be opened to conduct the test required to be conducted immediately before the start of the official count.

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

All results of all of the tests shall be immediately certified by the county commission and filed in the office of the clerk of the county commission and immediately recorded in the miscellaneous record book. On completion of the count, the program deck, test materials and ballot cards shall be sealed, except for purposes of the canvass as provided in section twenty-eight of this article, and retained and kept under individual multiple locks with individual keys for each lock.
Said numbers of locks and keys shall be the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his possession.

§3-4A-27. Proceedings at the central counting center.
1 (1) All proceedings at the central counting center shall be under the supervision of the clerk of the county commission, and shall be conducted under circumstances which allow observation by all persons entitled to be present. The proceedings shall take place in a room of sufficient size and satisfactory arrangement to permit such observation. Those persons entitled to be present shall include all candidates whose names appear on the ballots being counted, or if such candidate be absent, a representative of such candidate, and two representatives of each political party on such ballot, who shall be chosen by the local chairman of such political party's executive committee. A reasonable number of the general public shall also be freely admitted to the room. In the event all members of the general public desiring admission to the room cannot be admitted at one time, the county commission shall provide for a periodic and convenient rotation of admission to the room for observation, to the end that each member of the general public desiring admission shall, during the proceedings at the central counting center, be granted such admission for reasonable periods of time for observation: Provided, That no person except those authorized for the purpose shall touch any ballot or ballot card or other official records and papers utilized in the election during such observation. All persons who are engaged in processing and counting of the ballots shall be representative of each political party on the ballot, and shall be deputized in writing and take an oath that they will faithfully perform their assigned duties. Such deputies shall be issued an official badge or identification card which shall be assigned an identity control number, and such deputies shall prominently wear on his or her outer garments the issued badge or identification card. Upon completion of the deputies' duties, the badges or identification cards shall be returned to the county clerk. If any ballot card is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot card in the presence of representatives of each political party on the ballot and
(2) The returns printed by the automatic tabulating equipment at the central counting center, to which have been added write-in and other valid votes, shall, when certified by the board of canvassers, constitute the official return of each precinct or election district. Further, all such returns shall be printed on a precinct basis. Upon completion of the count, the returns shall be open to the public by posting such returns precinct by precinct at the central counting center. Upon completion of the canvass, the returns shall be posted in the same manner.

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

(4) As soon as possible after the completion of the count, the clerk of the county commission shall have the vote recording devices properly boxed or securely covered and removed from the polling place to a proper and secure place of storage.

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

1 (1) The vote recording devices, the ballot labels, ballot cards, program decks and standard validation test decks shall remain sealed during the canvass of the returns of the election and for a period of seven days thereafter, except that such equipment may be opened for the canvass and it shall be resealed immediately thereafter. During such period any candidate or the local chairman of a political party may be permitted to examine any of the materials so sealed:

Provided, That a notice of the time and place of such examination shall be posted at the central counting center before and on the hour of nine o'clock in the morning on the day of the examination is to occur, and all persons entitled to be present at the central counting center may, at their option, be present. Upon completion of the canvass and after a seven-day period has expired, the vote recording devices, the ballot labels, ballot cards, program decks and standard validation test decks shall be sealed for one year: Provided,
however, That the vote recording devices and all tabulating equipment may be released for use in any other lawful election to be held more than ten days after the canvass is completed, and any of the electronic voting equipment herein discussed may be released for inspection or review by a request of a circuit court or the supreme court of appeals.

(2) In canvassing the returns of the election, the board of canvassers shall examine all of the vote recording devices, the ballot labels, ballot cards and the automatic tabulating equipment used in such election and shall determine the number of votes cast for each candidate and for and against each question and by such examination shall procure the correct returns and ascertain the true results of the election. Any candidate or his party representative may be present at such examination.

(3) If any candidate shall demand a recount of the votes cast at an election, the ballots and ballot cards shall be reexamined during such recount for the purpose of reascertaining the total number of votes cast for any candidate in the same manner and according to the same rules as are utilized in the original vote count pursuant to section twenty-seven of this article.

(4) During the canvass and any requested recount, at least five percent of the precincts shall be chosen at random and the ballot cards cast therein counted manually. The same random selection shall also be counted by the automatic tabulating equipment. If the variance between the random manual count and the automatic tabulating equipment count of the same random ballots, is equal to or greater than one percent, then a manual recount of all ballot cards shall be required. In the course of any recount, if a candidate for an office shall so demand, or if the board of canvassers shall so elect to recount the votes cast for an office, the votes cast for that office in any precinct shall be recounted by manual count.

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

Any person not an election officer or other public official who shall tamper or attempt to tamper with any vote...
recording device, ballot label, ballot or ballot card, program
deck, standard validation test deck, or automatic tabulating
equipment, or in any way intentionally impair or attempt to
impair, their use, and any person who shall be guilty of or
shall attempt any dishonest practice upon any such devices
or equipment, or with or by their use, shall be deemed guilty
of a felony, and, upon conviction thereof, shall be confined in
the penitentiary for not less than one year nor more than
ten years, or fined not less than five thousand dollars, or both.

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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 31 day of March, 1982.

Governor