

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

Com. Sub. for
HOUSE BILL No. 4770

(By ~~the~~ Delegates *Merrett Buchanan*)

— ● —

Passed *March 10,* 1990

In Effect *90 Days from* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4770
(By DELEGATES MEROW AND BUCHANAN)

[Passed March 10, 1990; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, nine, ten, ten-a, twelve, thirteen, fifteen, sixteen, seventeen, nineteen, nineteen-a, twenty, twenty-one, twenty-two, twenty-four and twenty-five, article four-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eleven-a, all relating to electronic voting systems; updating terminology to allow for systems by which votes are recorded by means of marking with electronically sensible ink or pencil; setting forth the method by which straight party tickets are to be counted, consistent with the counting in other voting systems; clarifying that a voter in primary elections may vote for candidates of a party for which he or she is legally entitled to vote; providing that the clerk of the county commission is the custodian of the tabulating equipment; prescribing the form for ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil; removing certain candidates whose ballot positions are determined by drawing by lot; and providing for criminal penalties upon violation of certain provisions.

Be it enacted by the Legislature of West Virginia:

That sections two, nine, ten, ten-a, twelve, thirteen, fifteen, sixteen, seventeen, nineteen, nineteen-a, twenty, twenty-one, twenty-two, twenty-four and twenty-five, article four-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section eleven-a, 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
3 apparatus necessary to electronically count votes
4 recorded on ballots and tabulate the results;

5 (b) "Ballot" means a tabulating card or paper on
6 which votes may be recorded by means of perforating
7 or marking with electronically sensible 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 device
12 used for recording votes by means of perforating;

13 (d) "Central counting center" means a facility
14 equipped with suitable and necessary automatic tabulat-
15 ing equipment, selected by the county commission, for
16 the electronic counting of votes recorded on ballots;

17 (e) "Electronic voting system" is a means of conduct-
18 ing an election whereby votes are recorded on ballots by
19 means of an electronically sensible marking ink or by
20 perforating, and such votes are subsequently counted by
21 automatic tabulating equipment at the central counting
22 center;

23 (f) "Program deck" means the actual punch card deck
24 or decks, or a computer program disk, diskette, tape or
25 other programming media, containing the program for
26 counting and tabulating the votes, including the
27 "application program deck";

28 (g) "Application program deck" means the punch
29 card deck or equivalent capacity in other program
30 medias as provided, containing specific options used and
31 necessary to modify the program of general application,
32 to conduct and tabulate a specific election according to
33 applicable law;

34 (h) "Standard validation test deck" means a group of
35 ballots wherein all voting possibilities which can occur
36 in an election are represented; and

37 (i) "Vote recording device" means equipment in which
38 ballot labels and ballots are placed to allow a voter to
39 record his vote by perforating.

§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
3 commission or be purchased, leased or used, by any
4 county commission unless it shall fulfill the following
5 requirements:

6 (1) It shall secure or ensure the voter absolute secrecy
7 in the act of voting, or, at the voter's election, shall
8 provide for open voting;

9 (2) It shall be so constructed that no person except in
10 instances of open voting, as herein provided for, can see
11 or know for whom any voter has voted or is voting;

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

24 (4) It shall permit each voter to deposit, write in, or

25 affix upon a ballot, card or envelope to be provided for
26 that purpose, ballots containing the names of persons for
27 whom he desires to vote whose names do not appear
28 upon the ballots or ballot labels;

29 (5) It shall permit each voter to change his vote for
30 any candidate and upon any question appearing upon
31 the ballots or ballot labels up to the time when his ballot
32 is deposited in the ballot box;

33 (6) It shall contain a program deck consisting of cards
34 that are sequentially numbered, or consisting of a
35 computer program disk, diskette, tape or other pro-
36 gramming media containing sequentially numbered
37 program instructions and coded or otherwise protected
38 from tampering or substitution of the media or program
39 instructions by unauthorized persons, and capable of
40 tabulating all votes cast in each election;

41 (7) It shall contain two standard validation test decks
42 approved as to form and testing capabilities by the state
43 election commission;

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

47 (9) It shall permit each voter at any election other
48 than primary elections, by one mark or punch to vote
49 a straight party ticket, as provided in section five,
50 article six of this chapter.

51 (10) It shall permit each voter in primary elections to
52 vote only for the candidates of the party for which he
53 or she is legally permitted to vote, and preclude him
54 from voting for any candidate seeking nomination by
55 any other political party, permit him to vote for the
56 candidates, if any, for nonpartisan nomination or
57 election, and permit him to vote on public questions;

58 (11) It shall, where applicable, be provided with
59 means for sealing the vote recording device to prevent
60 its use and to prevent tampering with ballot labels, both
61 before the polls are open or before the operation of the
62 vote recording device for an election is begun and
63 immediately after the polls are closed or after the

64 operation of the vote recording device for an election is
65 completed;

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

70 (13) Where vote recording devices are used, they
71 shall:

72 (A) Be durably constructed of material of good
73 quality and in a workmanlike manner and in a form
74 which shall make it safely transportable;

75 (B) Be so constructed with frames for the placing of
76 ballot labels and with suitable means for the protection
77 of such labels, that the labels on which are printed the
78 names of candidates and their respective parties, titles
79 of offices, and wording of questions shall be so reason-
80 ably protected from mutilation, disfigurement or
81 disarrangement;

82 (C) Bear a number that will identify it or distinguish
83 it from any other machine;

84 (D) Be so constructed that a voter may easily learn the
85 method of operating it and may expeditiously cast his
86 vote for all candidates of his choice, and upon any public
87 question; and

88 (E) Be accompanied by a mechanically operated
89 instruction model which shall show the arrangement of
90 ballot labels, party columns or rows, and questions.

**§3-4A-10. County clerk to be custodian of vote recording
devices and tabulating equipment; duties.**

1 When an electronic voting system is acquired by any
2 county commission, the vote recording devices, where
3 applicable, and the tabulating equipment shall be
4 immediately placed in the custody of the county clerk,
5 and shall remain in his or her custody at all times except
6 when in use at an election or when in custody of a court
7 or court officers during contest proceedings. The clerk
8 shall see that the vote recording devices and the
9 tabulating equipment are properly protected and

10 preserved from damage or unnecessary deterioration,
11 and shall not permit any unauthorized person to tamper
12 with them. The clerk shall also be charged with the duty
13 of keeping the vote recording devices and tabulating
14 equipment in repair and of preparing the same for
15 voting.

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

1 Where vote recording devices are used, the county
2 commission of each county shall, upon the close of
3 registration, review the total number of registered
4 voters and the number of registered voters of each party
5 in each precinct. Prior to each election, the commission
6 shall determine the number of voting devices needed to
7 accommodate voters without long delays and shall
8 assign an appropriate number to each precinct. For the
9 purposes of the primary election, the commission shall
10 assign the number of vote recording devices in each
11 precinct to be prepared for each party based as nearly
12 as practicable on the proportion of registered voters of
13 each party to the total: *Provided*, That a minimum of
14 one vote recording device per party be provided, except
15 for "independent" voters, which shall be determined
16 under section twenty of this article.

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

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

6 (b) (1) The heading of the ballot, the arrangement of
7 offices in columns, the spaces for marking votes, the
8 printing of offices, instructions and candidates names
9 shall conform as nearly as possible to that prescribed in
10 this chapter for paper ballots, except that the secretary
11 of state may prescribe necessary modifications to
12 accommodate the tabulating system. Nonpartisan
13 elections for board of education and any question to be

14 voted upon shall be separated from the partisan ballot
15 and separately headed in display type with a title clearly
16 identifying the purpose of the election, and such
17 separate section shall constitute a separate ballot
18 wherever a separate ballot is required under the
19 provisions of this chapter.

20 (2) Both the face and the reverse side of the ballot
21 may contain the names of candidates, only if means to
22 insure the secrecy of the ballot are provided and lines
23 for the signatures of the poll clerks on the ballot are
24 printed on a portion of the ballot which is deposited in
25 the ballot box and upon which marks do not interfere
26 with the proper tabulation of the votes.

27 (3) The arrangement of candidates within each office
28 shall be determined in the same manner as for other
29 electronic voting systems, as prescribed in this chapter.
30 On the general election ballot only, lines for entering
31 write-in votes shall be provided below the names of
32 candidates for each office, and the number of lines
33 provided for any office shall equal the number of
34 persons to be elected. The words "WRITE-IN, IF ANY"
35 shall be printed directly under each line for write-ins.
36 Such lines shall be opposite a position to mark the vote.
37 Write-in votes which appear on the ballot in places other
38 than the lines provided for write-ins shall not be
39 counted, but any name entered on a line for a write-in
40 vote shall be counted in accordance with the rules for
41 counting write-ins in a general election in other voting
42 systems.

43 (c) The ballot shall be printed in black ink on paper
44 suitable for automatic tabulation and in the color
45 specified by the secretary of state, and shall contain a
46 perforated stub at the top or bottom of the ballot which
47 shall be numbered sequentially in the same manner as
48 provided in this article for ballots upon which votes are
49 recorded by means of perforating. The number of ballots
50 printed and the packaging of ballots for the precincts
51 shall conform to the requirements for paper ballots as
52 provided in this chapter.

53 (d) In addition to the official ballots, the ballot

54 commissioners shall provide all other materials and
 55 equipment necessary to the proper conduct of the
 56 election.

§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.

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

Democratic Ticket	Republican Ticket
For House of Delegates	For House of Delegates
Name	Name
70 ←	→ 69
72 ←	→ 71
74 ←	→ 73
76 ←	→ 75

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26 (b) The secretary of state shall assign a uniform
 27 number applicable to all counties using electronic voting
 28 for all straight party tickets and for all candidates
 29 running for offices to be voted upon by all of the voters
 30 of the state. The number so designated by the secretary
 31 of state shall be used by all counties using electronic

32 voting systems irrespective of the fact that in one or
33 more such counties the number or numbers so desig-
34 nated may result in other than strict sequential ballot
35 arrangement.

36 (c) After taking into account the numbers so assigned
37 by the secretary of state to straight party tickets and
38 all candidates for offices to be voted upon by all the
39 voters of the state, the clerk of the circuit court shall
40 appoint a time at which all candidates whose ballot
41 positions are to be determined by drawing by lot are to
42 appear before the clerk for such drawing. Candidates
43 whose ballot positions are to be determined by drawing
44 by lot are those candidates for an office for which the
45 voters will elect more than one person to represent the
46 electoral districts, including, but not limited to, House
47 of Delegates contests in multi-delegate districts, contests
48 for the office of county board of education, magistrate
49 and delegate to a political party national convention.
50 The clerk shall give due notice of such time to each
51 candidate by United States mail, directed to the address
52 given by the candidate in his announcement of
53 candidacy.

54 (d) It shall be the duty of the secretary of state to
55 provide each circuit clerk with a list of names and
56 addresses of candidates running for office in such clerk's
57 county who have filed their announcement of candidacy
58 with the secretary of state, and who are candidates
59 whose ballot positions are to be determined by drawing
60 by lot. At the time appointed, all such candidates whose
61 ballot positions are to be determined by lot shall
62 assemble in the office of such clerk and such candidates
63 shall then proceed to draw by lot to determine where
64 their names shall appear on the ballots or ballot labels.
65 The number so drawn by each such candidate shall
66 determine where his or her name shall appear on the
67 ballots or ballot labels. In the event any candidate or
68 candidates fail to appear at the time appointed, the clerk
69 shall draw for such absent candidate or candidates in
70 the presence of those candidates assembled, if any, and
71 the number so drawn by the clerk shall determine
72 where the name of any absent candidate or candidates

73 shall appear on the ballots or ballot labels. The circuit
74 clerk shall record the number drawn by each candidate
75 and his name in an appropriate book. The ballot
76 commissioners shall proceed to have the ballots or ballot
77 labels printed according to the provisions of this article.
78 After receiving the printed ballots or ballot labels, the
79 clerk of the circuit court shall ascertain their accuracy
80 and the clerk of the county commission shall, in counties
81 utilizing vote recording devices, proceed to have the
82 ballot labels placed in the vote recording devices. The
83 clerk of the county commission shall then seal the vote
84 recording devices so as to prevent tampering with ballot
85 labels, and enter in an appropriate book, opposite the
86 number of each precinct, the identifying or distinguish-
87 ing number of the specific vote recording device or
88 devices to be used in that precinct.

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

1 When the clerk of the county commission has com-
2 pleted the preparation of the ballots and vote recording
3 devices as provided in sections eleven, eleven-a and
4 twelve of this article and as provided in section twenty-
5 one, article one of this chapter, and not later than seven
6 days before the day of the election, he or she shall notify
7 the members of the county commission and the ballot
8 commissioners that the ballots and devices, where
9 applicable, are ready for use. Thereupon the members
10 of the county commission and the ballot commissioners
11 shall convene at the office of the clerk or at such other
12 place wherein the vote recording devices, where
13 applicable, and ballots are stored, not later than five
14 days before the day of the election, and shall inspect the
15 devices and the ballots to determine whether the
16 requirements of this article have been met. Notice of the
17 place and time of such inspection shall be published, no
18 less than three days prior thereto, as a Class I-0 legal

19 advertisement in compliance with the provisions of
20 article three, chapter fifty-nine of this code, and the
21 publication area for such publication shall be the county
22 involved. Any candidate and one representative of each
23 political party on the ballot may be present during such
24 examination. If the devices, where applicable, and
25 ballots are found to be in proper order, the members of
26 the county commission and the ballot commissioners
27 shall, where applicable, endorse their approval in the
28 book in which the clerk entered the numbers of the
29 devices opposite the numbers of the precincts. The vote
30 recording devices and the ballots shall then be secured
31 in double lock rooms. The county clerk and the president
32 or president pro tempore of the county commission shall
33 each have a key. The rooms shall be unlocked only in
34 their presence and only for the removal of the devices,
35 where applicable, and the ballots for transportation to
36 the polls. Upon such removal of the devices and ballots,
37 the county clerk and president or president pro tempore
38 of the county commission shall certify in writing signed
39 by them that the devices, where applicable, and
40 packages of ballots were found to be sealed when
41 removed for transportation to the polls.

42 Not later than one day before the election, the election
43 commissioner of each precinct who shall have been
44 previously designated by the ballot commissioners, shall
45 attend at the office of the clerks of the circuit court and
46 county commission of such county to receive the
47 necessary election records, books and supplies required
48 by law. Such election commissioners shall receive the
49 per diem mileage rate prescribed by law for this service.
50 Such election commissioners shall give the ballot
51 commissioners a sequentially numbered written receipt,
52 on a printed form, provided by the clerk of the county
53 commission, for such records, books and supplies. Such
54 receipt shall be prepared in duplicate. One copy of the
55 receipt shall remain with the clerk of the county
56 commission and one copy shall be delivered to the
57 president or president pro tempore of the county
58 commission.

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

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

19 (b) The ballot commissioners shall also provide
20 facsimile ballots or ballot labels, as may be appropriate,
21 at least two of which, or complete sets of which, shall
22 be posted on the walls of each polling place. The
23 facsimile diagrams shall be exact diagrams of the
24 ballots or ballot labels or paper ballots to the end that
25 the voter may become familiar with the location of the
26 parties, offices, candidates and questions as they appear
27 on the ballot to be used in his precinct.

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

33 (d) In counties where an electronic voting system has
34 been adopted, the legal ballot advertisements required
35 by articles five and six of this chapter, shall consist of
36 a facsimile of the ballot or ballot labels with the names
37 of the candidates and the offices for which they are

38 running shown in their proper positions.

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

1 The clerk of the county commission shall deliver or
 2 cause to be delivered each vote recording device, where
 3 applicable, and the package of ballots to the polling
 4 place where they are to be employed. Such delivery shall
 5 be made not less than one hour prior to the opening of
 6 the polls and shall be made in the presence of the
 7 precinct election commissioners. At the time of the
 8 delivery of such vote recording device, where applicable,
 9 and the ballots, the device shall be sealed in such a way
 10 to prevent its use prior to the opening of the polls and
 11 any tampering with the ballot labels and the ballots
 12 shall be packaged and sealed in such a way to prevent
 13 any tampering with the ballots. Immediately prior to
 14 the opening of the polls on election day, the sealed
 15 packages of ballots shall be opened, and the seal of the
 16 vote recording device shall be broken in the presence of
 17 the precinct election commissioners, who shall certify in
 18 writing signed by them to the clerk of the county
 19 commission, that the devices, where applicable, and the
 20 ballots have been delivered in their presence, that the
 21 devices and packages of ballots were found to be sealed
 22 upon such delivery, and that the seals have been broken
 23 and the devices opened in their presence, as may be
 24 appropriate. The election commissioners shall then
 25 cause the vote recording device, where applicable, to be
 26 arranged in the voting booth in such manner that the
 27 front of the vote recording device on which the ballot
 28 labels appear will not be visible, when the vote record-
 29 ing device is being operated, to any person other than
 30 the voter if the voter shall elect to close the curtain,
 31 screen or hood to the voting booth.

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

1 In counties utilizing an electronic voting system where
 2 votes are to be recorded by means of perforating before
 3 permitting the first voter to vote, the election commis-
 4 sioners shall examine the vote recording devices to

5 ascertain whether the ballot labels are arranged as
6 specified on the facsimile diagram furnished to the
7 precinct. If the ballot labels are arranged incorrectly,
8 the commissioners shall immediately notify the clerk of
9 the county commission of the foregoing facts in writing,
10 indicating the number of the device, and obtain from
11 such clerk a reserve vote recording device, and thereaf-
12 ter proceed to conduct the election. Any reserve vote
13 recording device so used shall be prepared for use by
14 the clerk or his duly appointed deputy and said reserve
15 vote recording device shall be prepared, inspected and
16 sealed, and delivered to the polling place wherein the
17 seal shall be broken and such device opened in the
18 presence of the precinct election commissioners who
19 shall certify in writing signed by them to the clerk of
20 the county commission, that the reserve vote recording
21 device was found to be sealed upon delivery to the
22 polling place, that the seal was broken and the device
23 opened in their presence at the polling place. The vote
24 recording device found to have been with incorrect
25 ballot labels shall be returned immediately to the
26 custody of the clerk who shall then promptly cause such
27 vote recording device to be repaired, prepared and
28 resealed in order that it may be used as a reserve vote
29 recording device if needed.

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

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

5 (2) In primary elections, before a voter is permitted
6 to occupy the voting booth, the election commissioner
7 representing the party to which the voter belongs shall
8 direct the voter to the vote recording device or supply
9 the voter with a ballot, as may be appropriate, which
10 will allow the voter to vote only for the candidates who
11 are seeking nomination on the ticket of the party with
12 which the voter is affiliated.

13 (3) The poll clerk shall issue to each voter when he

14 signs the pollbook a card or ticket numbered to
15 correspond to the number on the pollbook of such voter,
16 and in the case of a primary election, indicating the
17 party affiliation of such voter, which numbered card or
18 ticket shall be presented to the election commissioner in
19 charge of the voting booth.

20 (4) One hour before the opening of the polls the
21 precinct election commissioners shall arrive at the
22 polling place and set up the voting booths so that they
23 will be in clear view of the election commissioners.
24 Where applicable, they shall open the vote recording
25 devices, place them in the voting booths, examine them
26 to see that they have the correct ballots or ballot labels
27 by comparing them with the sample ballots, and
28 determine whether they are in proper working order.
29 They shall open and check the ballots, supplies, records
30 and forms, and post the sample ballots or ballot labels
31 and instructions to voters. Upon ascertaining that all
32 ballots, supplies, records and forms arrived intact, the
33 election commissioners shall so certify in writing their
34 findings upon forms provided and collected by the clerk
35 of the county commission over their signatures to the
36 clerk of the county commission. Any discrepancies shall
37 be so noted and reported immediately to the clerk of the
38 county commission. The election commissioners shall
39 then number in sequential order the ballot stub of each
40 ballot in their possession and report in writing to the
41 clerk of the county commission the number of ballots
42 received. They shall issue such ballots in sequential
43 order to each voter.

44 (5) Where applicable, each voter shall be instructed
45 how to operate the vote recording device before he
46 enters the voting booth.

47 (6) Any voter who shall spoil, deface or mutilate the
48 ballot delivered to him, on returning the same to the poll
49 clerks, shall receive another in place thereof. Every
50 person who does not vote any ballot delivered to him
51 shall, before leaving the election room, return such
52 ballot to the poll clerks. When a spoiled or defaced ballot
53 is returned, the poll clerks shall make a minute of the
54 fact on the pollbooks, at the time, and the word "spoiled"

55 shall be written across the face of the ballot and it shall
56 be placed in an envelope for spoiled ballots.

57 Immediately on closing the polls, the election commis-
58 sioners shall ascertain the number of spoiled ballots
59 during the election and the number of ballots remaining
60 not voted. The election commissioners shall also ascer-
61 tain from the pollbooks the number of persons who voted
62 and shall report, in writing signed by them to the clerk
63 of the county commission, any irregularities in the ballot
64 boxes, the number of ballots cast, the number of ballots
65 spoiled during the election and the number of ballots
66 unused. All unused ballots shall at the same time be
67 returned to the clerk of the county commission who shall
68 count them and record the number. If there is no
69 discrepancy, the unused ballots shall be destroyed
70 forthwith, before a representative of each party on the
71 ballot, by fire or otherwise, by the clerk of the county
72 commission or a duly designated deputy clerk. If there
73 is a discrepancy, the unused ballots shall be impounded
74 and secured under double locks until the discrepancy is
75 resolved. The county clerk and the president or presi-
76 dent pro tempore of the county commission shall each
77 have a key. Upon resolution of the discrepancy, the
78 unused ballots shall forthwith, before a representative
79 of each party on the ballot, be destroyed by fire or
80 otherwise, by the clerk of the county commission or a
81 duly designated deputy clerk.

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

88 The board of ballot commissioners of each county, or
89 the chairman thereof, shall preserve the ballots that are
90 left over in their hands, after supplying the precincts as
91 provided, until the close of the polls on the day of
92 election, and such ballots shall then be destroyed by such
93 board, or the chairman thereof, by fire or otherwise.

94 (7) Where ballots are used, the voter, after he has

95 marked his ballot shall, before leaving the voting booth,
 96 place the ballot inside the envelope provided for this
 97 purpose, with the stub extending outside said envelope,
 98 and return it to an election commissioner who shall
 99 remove the stub and deposit the envelope with the ballot
 100 inside in the ballot box. No ballot from which the stub
 101 has been detached shall be accepted by the officer in
 102 charge of the ballot box, but such ballot shall be marked
 103 "spoiled" and placed with the spoiled ballots.

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

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

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

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

1 Every ballot utilized during the course of any
 2 electronic voting system election conducted under the

3 provisions of this article shall provide two lines for the
4 signatures of the poll clerks. Both of the signature lines
5 shall be printed on a portion of the ballot where votes
6 are not recorded by perforation or marking, but which
7 portion is an actual part of the ballot deposited in the
8 ballot box after the voter has perforated or marked his
9 ballot and after the ballot stub has been removed.

10 Each of the two poll clerks shall sign his name on one
11 of the designated lines provided on each ballot before
12 any ballot is distributed to a voter. After a voter has
13 signed the pollbook, as required in section nineteen of
14 this article, the two poll clerks shall deliver a ballot to
15 the voter, which ballot has been signed by each of the
16 two poll clerks as provided herein.

17 In the course of an election contest, if it is established
18 that a ballot does not contain the two signatures
19 required by this section, such ballot shall be null, void
20 and of no effect, and shall not be counted.

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

1 If at any primary elections, nonpartisan candidates
2 for office and public questions are submitted to the
3 voters and on which candidates and questions persons
4 registered as "independent" are entitled to vote, as
5 provided in section eighteen, article two of this chapter,
6 the election officers shall provide a vote recording
7 device, where applicable, or the appropriate ballot to be
8 marked by an electronically sensible pen or ink, so that
9 such "independent" voters may vote only those portions
10 of the ballot relating to the nonpartisan candidates and
11 the public questions submitted, or provide a ballot
12 containing only provision for voting for those candidates
13 and/or upon those issues common to the ballots provided
14 to all voters regardless of political party affiliation.

15 In counties utilizing electronic voting systems in
16 which votes are recorded by perforating, if vote
17 recording devices are not available for the "independ-
18 ent" voters, provision shall be made for sealing the
19 partisan section or sections of the ballot or ballot labels
20 on a vote recording device using temporary seals, thus
21 permitting the independent voter to vote for the

22 nonpartisan section or sections of the ballot or ballot
23 labels. After the “independent” voter has voted, the
24 temporary seals may be removed and the device may
25 then be used by partisan voters.

**§3-4A-21. Absent voter ballots; issuance, processing and
tabulation.**

1 Absentee voters shall cast their votes on absent voter
2 ballots. If absentee voters shall be deemed eligible to
3 vote in person at the office of the clerk of the circuit
4 court, in accordance with the provisions of article three
5 of this chapter, the clerk of the circuit court of each
6 county shall provide a vote recording device or other
7 means, as may be appropriate for votes recorded by
8 electronically sensible ink or pencil, for the use of such
9 absentee voters. For all absentee voters deemed eligible
10 to vote an absent voter’s ballot by mail, in accordance
11 with the provisions of article three of this chapter, the
12 clerk of the circuit court of each county shall prepare
13 and issue an absent voter ballot packet consisting of the
14 following:

- 15 (a) One official absent voter ballot;
- 16 (b) One punching tool for perforating or a device for
17 marking by electronically sensible pen or ink, as may
18 be appropriate;
- 19 (c) If a punching tool is to be utilized, one disposable
20 styrofoam block to be placed behind the ballot card for
21 voting purposes and to be discarded after use by the
22 voter;
- 23 (d) One absent voter instruction ballot;
- 24 (e) One absent voter’s ballot envelope No. 1, unsealed,
25 which shall have no writing thereon and which shall be
26 identical to the secrecy envelope used for placement of
27 ballots at the polls; and
- 28 (f) One absent voter’s ballot envelope No. 2, which
29 envelope shall be marked with the proper precinct
30 number and shall provide a place on its seal for the
31 absent voter to affix his signature. Such envelope shall
32 also otherwise contain the forms and instructions as

33 provided in section five, article three of this chapter,
34 relating to the absentee voting of paper ballots.

35 Upon receipt of an absent voter's ballot by mail, the
36 voter shall mark the ballot with the punch tool or
37 marking device, whichever is appropriate, and the voter
38 may receive assistance in voting his absent voter's ballot
39 in accordance with the provisions of section six, article
40 three of this chapter.

41 After the voter has voted his absent voter's ballot, he
42 shall (1) enclose the same in absent voter's ballot
43 envelope No. 1, and seal that envelope, (2) enclose sealed
44 absent voter's ballot envelope No. 1 in absent voter's
45 ballot envelope No. 2, (3) complete and sign the forms,
46 if any, on absent voter's ballot envelope No. 2 according
47 to the instructions thereon, and (4) mail, postage
48 prepaid, sealed absent voter's ballot envelope No. 2 to
49 the clerk of the circuit court of the county in which he
50 is registered to vote, unless the voter has appeared in
51 person, in which event he shall hand deliver the sealed
52 absent voter's ballot envelope No. 2 to the clerk.

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

67 When absent voters' ballots have been delivered to the
68 election board of any precinct, the election commission-
69 ers shall, at the close of the polls, proceed to determine
70 the legality of such ballots as prescribed in article three
71 of this chapter. The commissioners shall then open all
72 of the absent voter's ballot envelopes No. 2 which contain

73 ballots not challenged and remove therefrom the absent
74 voter's ballot envelopes No. 1. These ballot envelopes No.
75 1 shall then be shuffled and intermingled. The election
76 commissioners and poll clerks, in the presence of each
77 other, shall next open all of the absent voter's ballot
78 envelopes No. 1 and remove the ballots therefrom. The
79 poll clerks shall then affix their signatures thereto as
80 provided in section nineteen-a of this article. The
81 commissioners shall then insert each ballot into a
82 secrecy envelope identical to the secrecy envelopes used
83 for the placement of ballots of voters who are voting in
84 person at the polls and shall deposit the ballot in the
85 ballot box.

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

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

5 (1) By a person of the voter's choice: *Provided*, That
6 such assistance may not be given by the voter's present
7 or former employer or agent of that employer or by an
8 officer or agent of a labor union of which the voter is
9 a past or present member; or

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

23 (b) A person other than an election officer who assists
24 a voter in voting under the provisions of this section
25 shall sign a written oath or affirmation before assisting
26 such voter, stating that he or she will not override the

27 actual preference of the voter being assisted or mislead
28 the voter into voting for someone other than the
29 candidate of the voter's choice. Such person assisting the
30 voter shall also swear or affirm that he or she believes
31 that the voter is voting free of intimidation or manip-
32 ulation.

§3-4A-24. Voting by challenged voter.

1 If the right of any person to vote be challenged in
2 accordance with the provisions of article one of this
3 chapter, relating to the challenging of voters, and a vote
4 recording device or ballot is used that tabulates the vote
5 as an individual vote, such person shall be permitted to
6 cast his vote by use of the vote recording device or ballot,
7 as may be appropriate. He shall be provided with a
8 challenged ballot and ballot envelopes for the insertion
9 of the ballot after voting. There shall be an inner
10 envelope marked with the precinct number for the
11 challenged ballot. There shall also be another envelope
12 for the inner envelope and the challenged voter stub,
13 which envelope shall provide a place for the challenged
14 voter to affix his signature on the seal of such outer
15 envelope.

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

§3-4A-25. Closing polls.

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

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

Frederick Z. Perker
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

David E. Brown
Clerk of the Senate

Donald J. Kopp
Clerk of the House of Delegates

Kath Bennett
President of the Senate

Bob Chubb
Speaker of the House of Delegates

The within is approved this the *30th*
day of *March*, 1990.

Caston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/90

Time 4:55 pm

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