WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

Com. Sub. for
HOUSE BILL No. 4770

(By Delegate Merchant Buchanan)

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Passed March 10, 1990

In Effect 90 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.

As used in this article, unless otherwise specified:

(a) "Automatic tabulating equipment" means all apparatus necessary to electronically count votes recorded on ballots and tabulate the results;

(b) "Ballot" means a tabulating card or paper on which votes may be recorded by means of perforating or marking with electronically sensible ink or pencil;

(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 used for recording votes by means of perforating;

(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 ballots;

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

(f) "Program deck" means the actual punch card deck or decks, or a computer program disk, diskette, tape or other programming media, containing the program for counting and tabulating the votes, including the "application program deck";
3 [Enr. Com. Sub. for H. B. 4770]

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
affix upon a ballot, card or envelope 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 ballots or ballot labels;

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

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

(7) It 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, as provided in section five,
article six of this chapter.

(10) It shall permit each voter in primary elections to
vote only for the candidates of the party for which he
or she is legally permitted to vote, 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, where applicable, 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) Where vote recording devices are used, they
shall:

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

(B) 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 reason-
ably protected from mutilation, disfigurement or
disarrangement;

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

(D) 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

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

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

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

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

Where vote recording devices are used, the county commission of each county shall, upon the close of registration, review the total number of registered voters and the number of registered voters of each party in each precinct. Prior to each election, the commission shall determine the number of voting devices needed to accommodate voters without long delays and shall assign an appropriate number to each precinct. For the purposes of the primary election, the commission shall assign the number of vote recording devices in each precinct to be prepared for each party based as nearly as practicable on the proportion of registered voters of each party to the total: Provided, That a minimum of one vote recording device per party be provided, except for “independent” voters, which shall be determined under section twenty of this article.

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

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

(b) (1) The heading of the ballot, the arrangement of offices in columns, the spaces for marking votes, the printing of offices, instructions and candidates names shall conform as nearly as possible to that prescribed in this chapter for paper ballots, except that the secretary of state may prescribe necessary modifications to accommodate the tabulating system. Nonpartisan elections for board of education and any question to be
voted upon shall be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election, and such separate section shall constitute a separate ballot wherever a separate ballot is required under the provisions of this chapter.

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

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

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

(d) In addition to the official ballots, the ballot
§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.

(a) When the ballot labels are printed and delivered to the clerk of the county commission of a county using vote recording devices, 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. The ballot label and the arrangement of the ballot shall conform as nearly as practicable to the plan herein given:

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<thead>
<tr>
<th>Democratic Ticket</th>
<th>Republican Ticket</th>
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<tbody>
<tr>
<td>For House of Delegates</td>
<td>For House of Delegates</td>
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<table>
<thead>
<tr>
<th>Name</th>
<th>Name</th>
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<td>70</td>
<td>69</td>
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<td>71</td>
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<td>76</td>
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</tr>
</tbody>
</table>

(b) 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 number 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.

(c) 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 whose ballot positions are to be determined by drawing by lot are to appear before the clerk for such drawing. Candidates whose ballot positions are to be determined by drawing by lot are those candidates for an office for which the voters will elect more than one person to represent the electoral districts, including, but not limited to, House of Delegates contests in multi-delegate districts, contests for the office of county board of education, magistrate and delegate to a political party national convention. The clerk shall give due notice of such time to each candidate by United States mail, directed to the address given by the candidate in his announcement of candidacy.

(d) It shall be the duty of the secretary of state to provide each circuit clerk with a list of names and addresses of candidates running for office in such clerk's county who have filed their announcement of candidacy with the secretary of state, and who are candidates whose ballot positions are to be determined by drawing by lot. At the time appointed, all such candidates whose ballot positions are to be determined by lot 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 ballots or ballot labels printed according to the provisions of this article. After receiving the printed ballots or ballot labels, the clerk of the circuit court shall ascertain their accuracy and the clerk of the county commission shall, in counties utilizing vote recording devices, 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, and 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 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.

When the clerk of the county commission has completed the preparation of the ballots and vote recording devices as provided in sections eleven, eleven-a and twelve of this article and as provided in section twenty-one, article one of this chapter, and not later than seven days before the day of the election, he or she shall notify the members of the county commission and the ballot commissioners that the ballots and devices, where applicable, 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, where applicable, and ballots are stored, not later than five days before the day of the election, and shall inspect the devices and the ballots 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 
presentation 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, where applicable, and 
balloons are found to be in proper order, the members of 
the county commission and the ballot commissioners 
shall, where applicable, endorse their approval in the 
book in which the clerk entered the numbers of the 
devices opposite the numbers of the precincts. The vote 
recording devices and the balloons 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, 
where applicable, and the balloons for transportation to 
the polls. Upon such removal of the devices and balloons, 
the county clerk and president or president pro tempore 
of the county commission shall certify in writing signed 
by them that the devices, where applicable, and 
packages of balloons were found to be sealed when 
removed for transportation to the polls.

Not later than one day 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 court and 
the county commission 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-15. Instructions and help to voters; vote recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.

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

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

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

(d) In counties where an electronic voting system has been adopted, the legal ballot advertisements required by articles five and six of this chapter, shall consist of a facsimile of the ballot or ballot labels with the names of the candidates and the offices for which they are
running shown in their proper positions.

§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, where applicable, and the package of ballots to the polling place where they are 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 such vote recording device, where applicable, and the ballots, the device shall be sealed in such a way to prevent its use prior to the opening of the polls and any tampering with the ballot labels and the ballots shall be packaged and sealed in such a way to prevent any tampering with the ballots. Immediately prior to the opening of the polls on election day, the sealed packages of ballots shall be opened, and the seal of the vote recording device shall be broken in the presence of the precinct election commissioners, who shall certify in writing signed by them to the clerk of the county commission, that the devices, where applicable, and the ballots have been delivered in their presence, that the devices and packages of ballots were found to be sealed upon such delivery, and that the seals have been broken and the devices opened in their presence, as may be appropriate. The election commissioners shall then cause the vote recording device, where applicable, 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.

In counties utilizing an electronic voting system where votes are to be recorded by means of perforating before permitting the first voter to vote, the election commissioners shall examine the vote recording devices to
ascertain whether the ballot labels are arranged as specified on the facsimile diagram furnished to the precinct. If the ballot labels are arranged incorrectly, the commissioners shall immediately notify the clerk of the county commission of the foregoing facts in writing, indicating the number of the device, and obtain from such clerk a reserve vote recording device, and thereafter proceed 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-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 or supply the voter with a ballot, as may be appropriate, which will allow the voter to vote only for the candidates who are seeking nomination on the ticket of the party with which the voter is affiliated.

(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 voting booth.

(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. Where applicable, they shall open the vote recording devices, place them in the voting booths, examine them to see that they have the correct ballots or ballot labels by comparing them with the sample ballots, and determine whether they are in proper working order. They shall open and check the ballots, supplies, records and forms, and post the sample ballots or ballot labels and instructions to voters. Upon ascertaining that all ballots, 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 stub of each ballot in their possession and report in writing to the clerk of the county commission the number of ballots received. They shall issue such ballots in sequential order to each voter.

(5) Where applicable, 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 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 delivered to him shall, before leaving the election room, return such ballot to the poll clerks. When a spoiled or defaced ballot is returned, the poll clerks shall make a minute of the fact on the pollbooks, at the time, and the word “spoiled”
shall be written across the face of the ballot and it shall
be placed in an envelope for spoiled ballots.

Immediately on closing the polls, the election commis-
sioners shall ascertain the number of spoiled ballots
during the election and the number of ballots remaining
not voted. The election commissioners shall also ascer-
tain 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 cast, the number of ballots
spoiled during the election and the number of ballots
unused. All unused ballots 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 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 shall be impounded
and secured under double locks until the discrepancy is
resolved. The county clerk and the president or presi-
dent pro tempore of the county commission shall each
have a key. Upon resolution of the discrepancy, the
unused ballots 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 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 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 shall then be destroyed by such
board, or the chairman thereof, by fire or otherwise.

(7) Where ballots are used, the voter, after he has
marked his ballot shall, before leaving the voting booth, place the ballot 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 inside in the ballot box. No ballot from which the stub has been detached shall be accepted by the officer in charge of the ballot box, but such ballot shall be marked “spoiled” and placed with the spoiled ballots.

(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, spoiled ballots 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-19a. Form of ballots; requiring the signatures of poll clerks; prohibiting the counting of votes cast on ballots without such signatures.

Every ballot utilized during the course of any electronic voting system election conducted under the
provisions of this article shall provide two lines for the
signatures of the poll clerks. Both of the signature lines
shall be printed on a portion of the ballot where votes
are not recorded by perforation or marking, but which
portion is an actual part of the ballot deposited in the
ballot box after the voter has perforated or marked his
ballot and after the ballot stub has been removed.

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

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


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, where applicable, or the appropriate ballot to be
marked by an electronically sensible pen or ink, so that
such “independent” voters may vote only those portions
of the ballot relating to the nonpartisan candidates and
the public questions submitted, or provide a ballot
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.

In counties utilizing electronic voting systems in
which votes are recorded by perforating, 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 ballots. 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 or other means, as may be appropriate for votes recorded by electronically sensible ink or pencil, for the use of such absentee voters. For all absentee voters deemed eligible to vote an absent voter’s ballot 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;

(b) One punching tool for perforating or a device for marking by electronically sensible pen or ink, as may be appropriate;

(c) If a punching tool is to be utilized, 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 ballots 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 by mail, the voter shall mark the ballot with the punch tool or marking device, whichever is appropriate, and the voter may receive assistance in voting his absent voter’s ballot in accordance with the provisions of section six, article three of this chapter.

After the voter has voted his absent voter’s ballot, 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 commission- ers 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 all of the absent voter’s ballot envelopes No. 2 which contain
ballots not challenged and remove therefrom the absent
voter's ballot envelopes No. 1. These ballot envelopes No.
1 shall then be shuffled and intermingled. The election
commissioners and poll clerks, in the presence of each
other, shall next open all of the absent voter's ballot
envelopes No. 1 and remove the ballots therefrom. The
poll clerks shall then affix their signatures thereto as
provided in section nineteen-a of this article. The
commissioners shall then insert each ballot into a
secrecy envelope identical to the secrecy envelopes used
for the placement of ballots of voters who are voting in
person at the polls and shall deposit the ballot in the
ballot box.

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

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

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

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

(b) A person other than an election officer who assists
a voter in voting under the provisions of this section
shall sign a written oath or affirmation before assisting
such voter, stating that he or she will not override the
actual preference of the voter being assisted or mislead
the voter into voting for someone other than the
candidate of the voter's choice. Such person assisting the
voter shall also swear or affirm that he or she believes
that the voter is voting free of intimidation or manip-
ulation.


If the right of any person to vote be challenged in
accordance with the provisions of article one of this
chapter, relating to the challenging of voters, and a vote
recording device or ballot is used that tabulates the vote
as an individual vote, such person shall be permitted to
cast his vote by use of the vote recording device or ballot,
as may be appropriate. He shall be provided with a
challenged ballot and ballot envelopes for the insertion
of the ballot after voting. There shall be an inner
envelope marked with the precinct number for the
challenged ballot. There shall also be another 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 ballots and add the votes to the
previously counted totals.

§3-4A-25. Closing polls.

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

Frederick J. Berger  
Chairman Senate Committee

Bernard V. Kelly  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

史密斯
Clerk of the Senate

Donald L. Kopp  
Clerk of the House of Delegates

Walt Kurtz  
President of the Senate

Phil Kline  
Speaker of the House of Delegates

The within is approved this the 51st day of March, 1990.

Gov. Martin G. O'Malley  
Governor