WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2005

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2950

(By Mr. Speaker, Mr. Kiss, and Delegates Longstreth, Manchin, Caputo, Perdue, Martin, Amores and Beane)

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Passed April 8, 2005

In Effect Ninety Days from Passage
AN ACT to amend and reenact §3-4A-9 and §3-4A-28 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §3-4A-9a and §3-4A-9b, all relating to electronic voting systems; requiring a paper copy of a voter’s votes when using an electronic voting system to vote; providing that the paper copy can only be used for a random count of precincts or if an election is contested, challenged or disputed; providing that the Secretary of State may promulgate rules; authorizing use of ballot-marking accessible voting systems; setting forth minimum requirements for ballot-marking accessible voting systems; providing for use of ballot-scanning device; establishing standards for ballot-scanning devices; and making certain technical changes that clarify access to maintenance and examination of sealed post-election materials and
equipment during the canvass and requiring the immediate resealing.

Be it enacted by the Legislature of West Virginia:

That §3-4A-9 and §3-4A-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §3-4A-9a and §3-4A-9b, all to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

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

An electronic voting system of particular make and design may not be approved by the State Election Commission or be purchased, leased or used by any county commission unless it meets the following requirements:

1. It secures or ensures the voter absolute secrecy in the act of voting or, at the voter’s election, provides for open voting;

2. It is constructed to ensure that no person, except in instances of open voting as provided in this section, can see or know for whom any voter has voted or is voting;

3. It permits each voter to vote at any election for all persons and offices for whom and which he or she is lawfully entitled to vote, whether or not the name of any person appears on a ballot or ballot label as a candidate; and it permits each voter to vote for as many persons for an office as he or she is lawfully entitled to vote for; and to vote for or against any question upon which he or she is lawfully entitled to vote. The automatic tabulating equipment used in electronic voting systems is to reject choices recorded on any ballot if the number of choices exceeds the number to which a voter is entitled;
(4) It permits each voter to deposit, write in, affix upon a ballot, card, envelope or other medium to be provided for that purpose, ballots containing the names of persons for whom he or she desires to vote whose names do not appear upon the ballots or ballot labels;

(5) It permits each voter to change his or her vote for any candidate and upon any question appearing upon the ballots or ballot labels up to the time when his or her ballot is deposited in the ballot box or his or her ballot is cast by electronic means;

(6) It contains a program deck consisting of cards that are sequentially numbered or consisting of a computer program disk, diskette, tape or other programming 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 contains two standard validation test decks approved as to form and testing capabilities by the State Election Commission;

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

(9) It permits 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 permits 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 precludes him or her from voting for any candidate seeking nomination by any other political party, permits him or her to vote for the candidates, if any, for
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(11) It, where applicable, is provided with means for sealing or electronically securing 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 has the capacity to contain the names of candidates constituting the tickets of at least nine political parties and accommodates the wording of at least fifteen questions;

(13) (A) Direct recording electronic voting machines must generate a paper copy of each voter’s votes that will be automatically kept within a storage container, that is locked, closely attached to the direct recording electronic voting machine, and inaccessible to all but authorized voting officials, who will handle such storage containers and such paper copies contained therein in accordance with section nineteen of this article.

(B) The paper copy of the voter’s vote shall be generated at the time the voter is at the voting station using the direct recording electronic voting machine.

(C) The voter may examine the paper copy visually or through headphone readout, and may accept or reject the printed copy.

(D) The voter may not touch, handle or manipulate the printed copy manually in any way.

(E) Once the printed copy of the voter’s votes is accepted by the voter as correctly reflecting the voter’s intent, but not before, it will automatically be stored for recounts or random
checks and the electronic vote will be cast within the computer mechanism of the direct recording electronic voting machine.

(F) Direct recording electronic voting machines with a mandatory paper copy shall be approved by the Secretary of State. The Secretary of State may promulgate rules and emergency rules to implement or enforce this subsection pursuant to the provisions of section five, article three, chapter twenty-nine-a of this code.

(14) 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 makes it safely transportable;

(B) Be constructed with frames for the placing of ballot labels that the labels upon which are printed the names of candidates and their respective parties, titles of offices and wording of questions are reasonably protected from mutilation, disfigurement or disarrangement or are constructed to ensure that the screens upon which appear the names of the candidates and their respective parties, titles of offices and wording of questions are reasonably protected from any modification;

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

(D) Be constructed to ensure that a voter may easily learn the method of operating it and may expeditiously cast his or her vote for all candidates of his or her choice and upon any public question;

(E) Be accompanied by a mechanically or electronically operated instruction model which shows the arrangement of ballot labels, party columns or rows, and questions;
(F) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed to provide for the direct electronic recording and tabulating of votes cast in a system specifically designed and engineered for the election application;

(G) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed to prevent any voter from voting for more than the allowable number of candidates for any office, to include an audible or visual signal, or both, warning any voter who attempts to vote for more than the allowable number of candidates for any office or who attempts to cast his or her ballot prior to its completion and are constructed to include a visual or audible confirmation, or both, to the voter upon completion and casting of the ballot;

(H) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot;

(I) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed to allow election commissioners to spoil a ballot where a voter fails to properly cast his or her ballot, has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot;

(J) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed to allow election commissioners, poll
clerks, or both, to designate, mark or otherwise record provi-
sional ballots;

(K) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, consist of devices which are independent,
nonnetworked voting systems in which each vote is recorded
and retained within each device’s internal nonvolatile electronic
memory and contain an internal security, the absence of which
prevents substitution of any other device;

(L) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, store each vote in no fewer than three separate,
independent, nonvolatile electronic memory components and
that each device contains comprehensive diagnostics to ensure
that failures do not go undetected;

(M) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, contain a unique, embedded internal serial number for
auditing purposes for each device used to activate, retain and
record votes;

(N) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, be constructed to record all preelection, election and
post-election activities, including all ballot images and system
anomalies, in each device’s internal electronic memory and are
to be accessible in electronic or printed form;

(O) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, be constructed with a battery backup system in each
device to, at a minimum, prevent the loss of any votes, as well
as all preelection, election and post-election activities, including
all ballot images and system anomalies, stored in the device’s internal electronic memory and to allow voting to continue for two hours of uninterrupted operation in case of an electrical power failure; and

(P) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed to prevent the loss of any votes, as well as all pre-election, election and post-election activities, including all ballot images and system anomalies, stored in each device’s internal electronic memory even in case of an electrical and battery power failure.

§3-4A-9a. Authorization for ballot-marking voting systems; minimum requirements.

(a) For purposes of this section, "ballot-marking accessible voting system" means a device which allows voters, including voters with disabilities, to mark an optical scanning or mark-sensing voting system ballot, privately and independently. The ballot-marking device is capable of marking voter selections on an optically readable or mark-sensing ballot which shall be subsequently read and tallied on state certified optically readable or mark-sensing ballot tabulating and reporting systems. Counties are hereby permitted to obtain and employ ballot-marking accessible voting systems that are approved by the State Election Commission.

(b) The ballot-marking accessible voting device shall be a completely integrated ballot-marking device that is designed to allow voters to either view ballot choices through a high resolution visual display or listen to ballot choices with headphones and then enter ballot selections directly through specially designed, integrated accessibility keys.
(c) Ballot-marking accessible voting systems may be used for the purpose of marking or scanning optically readable or mark-sensing ballots cast in all general, special and primary elections and shall meet the following specific requirements:

(1) The ballot-marking accessible voting system, system firmware and programming software must be certified by an independent testing authority, according to current federal voting system standards and be approved by the State Elections Commission prior to entering into any contract.

(2) The ballot-marking accessible voting system shall, additionally:

(A) Alert the voter if the voter has made more ballot selections than the law allows for an individual office or ballot issue;

(B) Alert the voter if the voter has made fewer ballot selections than the law allows for an individual office or ballot issue;

(C) Allow the voter to independently review all ballot choices and make any corrections, before the ballot is marked;

(D) Provide the voter with the opportunity to make a write-in ballot choice, where allowed by state law;

(E) Allow voters with disabilities to mark their ballots, in complete independence, and in conformity with both federal and state law concerning mandatory accessibility for disabled persons;

(F) Allow blind or visually impaired voters to vote in complete privacy;
(G) Provide voters with an opportunity to change ballot selections, or correct errors, before the ballot is marked for voting, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct the error;

(H) Provide voters with the ability to view all ballot selections through a high resolution visual display or to have all ballot selections read to the voter through headphones;

(I) Ensure complete ballot privacy, while employing the ballot-marking audio system and providing the voter with the option to turn off the visual ballot display;

(J) Include a completely integrated voter input keypad, using commonly accepted voter accessibility keys with Braille markings;

(K) Include the ability for a voter to employ a sip/puff device to enter ballot choices;

(L) Allow the voter to magnify all ballot choices and to adjust both the volume of the audio feature and the speed of ballot presentation;

(M) Allow the voter to employ his or her own headset as well as the headset provided with the ballot-marking device while being equipped with multiple output connections to accommodate different headsets;

(N) Have multiple-language capability; and

(O) Allow the voter to verify that:

(i) An optical scan ballot inserted into the device at the start of voting is blank; and
(ii) The voted optical scan ballot that is produced by the device is voted as the voter intended.

(d) The Secretary of State is hereby directed to propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code designed to ensure that any system employed by a county under the provisions of this section is publicly tested prior to use in election.

§3-4A-9b. Authorization for precinct ballot-scanning device; minimum requirements.

(a) For purposes of this section, “precinct ballot-scanning device” means a device used by the voter at the precinct on election day or during early voting for the purpose of scanning the voter’s ballot after the ballot has been voted but prior to depositing the ballot into the ballot box.

(b) The precinct ballot-scanning device may be used for the purpose of scanning optically readable ballots cast in all primary, general and special elections.

(c) The precinct ballot-scanning device, firmware and programming software must be certified by an independent testing authority, according to current federal standards and be approved by the State Election Commission. No election official may enter into any contract to purchase, rent, lease or otherwise acquire any precinct ballot-scanning device, firmware or software not approved by the State Election Commission.

(d) The precinct ballot-scanning device shall additionally:

(1) Alert the voter if the voter has made more ballot selections than the law allows for an individual office or ballot issue;
(2) Alert the voter if the voter has made fewer ballot selections than the law allows for an individual office or ballot issue; and

(3) Allow voters an opportunity to change ballot selections, or correct errors, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct the error.

(e) The precinct ballot-scanning device shall not be used for tabulating election results.

(f) The Secretary of State is hereby directed to propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code in accordance with the provisions of this section.

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

(a) The vote recording devices, the ballot labels, ballot cards, program decks and standard validation test decks are to remain sealed during the canvass of the returns of the election except that the equipment may be opened for the canvass and must be resealed immediately thereafter. During a seven day period after the completion of the canvass, any candidate or the local chair of a political party may be permitted to examine any of the materials sealed: Provided, That a notice of the time and place of the examination is to be posted at the central counting center before and on the hour of nine o’clock in the morning on the day 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 are to 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.

(b) In canvassing the returns of the election, the board of canvassers shall examine all of the vote recording devices, the ballot labels, ballot cards, the automatic tabulating equipment used in the election and those voter verified paper ballots generated by direct recording electronic vote machines as required by subsection (d) of this section, and shall determine the number of votes cast for each candidate and for and against each question and by this examination shall procure the correct returns and ascertain the true results of the election. Any candidate or his or her party representative may be present at the examination.

(c) If any candidate demands a recount of the votes cast at an election, the voter verified paper ballot shall be used for requested recounts, according to the same rules as are utilized in the original vote count pursuant to section twenty-seven of this article.

(d) During the canvass and any requested recount, at least five percent of the precincts are to be chosen at random and the voter verified paper ballots are to be counted manually. Whenever the vote total obtained from the manual count of the voter verified paper ballots for all votes cast in a randomly selected precinct:

(1) Differs by more than one percent from the automated vote tabulation equipment; or

(2) Results in a different prevailing candidate or outcome, either passage or defeat, of one or more ballot issues such
precincts for any contest or ballot issue; then the discrepancies shall immediately be disclosed to the public and all of the voter-verified paper ballots shall be manually counted. In every case that there is a difference between the vote totals obtained from the automated vote tabulation equipment and the corresponding vote totals obtained from the manual count of the voter-verified paper ballots, the manual count of the voter-verified paper ballots shall be the vote of record.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chandy Watts
Chairman Senate Committee

D. Richard Brown
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Darrell E. Hollins
Clerk of the Senate

Sergo M. Day
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Kapil Bhuiyan
Speaker of the House of Delegates

The within is approved this the 4th day of May, 2005.

Earl Ray Tomblin
Governor
PRESENTED TO THE GOVERNOR

APR 22 2005

Time __________