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HB 4489

FILED

2006 MAR 30 A 10: 03

C. P. WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 4489**

(By Delegates Morgan, Schadler,  
Ellem, Amores and Armstead)



Passed March 10, 2006

In Effect Ninety Days from Passage

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OFFICE WEST VIRGINIA  
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**E N R O L L E D**

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FOR

**H. B. 4489**

(BY DELEGATES MORGAN, SCHADLER,  
ELLEM, AMORES AND ARMSTEAD)

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AN ACT to amend and reenact §3-4A-13 and §3-4A-26 of the Code of West Virginia, 1931, as amended, all relating to the testing of electronic voting machines used for early voting in order to allow their use on election day.

*Be it enacted by the Legislature of West Virginia:*

That §3-4A-13 and §3-4A-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

**§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 completed  
2 the preparation of the ballots and vote recording devices as  
3 provided in sections eleven, eleven-a and twelve of this article  
4 and as provided in section twenty-one, article one of this  
5 chapter, and not later than seven days before the day of the  
6 election, he or she shall notify the members of the county  
7 commission and the ballot commissioners that the ballots and  
8 devices, where applicable, are ready for use. Thereupon the  
9 members of the county commission and the ballot commission-  
10 ers shall convene at the office of the clerk or at such other place  
11 wherein the vote recording devices, where applicable, and  
12 ballots are stored, not later than five days before the day of the  
13 election, and shall inspect the devices and the ballots to  
14 determine whether the requirements of this article have been  
15 met. Notice of the place and time of such inspection shall be  
16 published, no less than three days prior thereto, as a Class I-0  
17 legal advertisement in compliance with the provisions of article  
18 three, chapter fifty-nine of this code, and the publication area  
19 for the publication shall be the county involved. Any candidate  
20 and one representative of each political party on the ballot may  
21 be present during such examination. If the devices, where  
22 applicable, and ballots are found to be in proper order, the  
23 members of the county commission and the ballot commission-  
24 ers shall, where applicable, endorse their approval in the book  
25 in which the clerk entered the numbers of the devices opposite  
26 the numbers of the precincts. The vote recording devices and  
27 the ballots shall then be secured in double lock rooms. The  
28 clerk and the president or president pro tempore of the county  
29 commission shall each have a key. The rooms shall be unlocked  
30 only in their presence and only for the removal of the devices,  
31 where applicable, and the ballots for transportation to the polls.  
32 Upon such removal of the devices and ballots, the clerk and  
33 president or president pro tempore of the county commission  
34 shall certify in writing signed by them that the devices, where

35 applicable, and packages of ballots were found to be sealed  
36 when removed for transportation to the polls.

37       Vote recording devices used during the early voting period  
38 may be used on election day if retested in accordance with all  
39 the provisions of this section, including public notice between  
40 the close of early voting and prior to precinct placement for  
41 election day. Vote recording devices containing a Personal  
42 Electronic Ballot (PEB), a Programable Memory Chip and a  
43 printed paper trail must comply with the applicable require-  
44 ments of section twenty-six of this article.

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

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

1       (a) One week prior to the start of the count of the votes  
2 recorded on ballots or ballot cards or screens, the clerk of the  
3 county commission shall have the automatic tabulating equip-  
4 ment tested to ascertain that it will accurately count the votes  
5 cast for all offices and on all measures. Public notice of the time  
6 and place of the test is to be given not less than forty-eight  
7 hours nor more than two weeks prior to the test by publication

8 of a notice as a Class I-0 legal advertisement in the county  
9 involved, in compliance with the provisions of article three,  
10 chapter fifty-nine of this code.

11 (b)(1) Vote recording devices used and tested for early  
12 voting may also be used on election day upon compliance with  
13 all of the following requirements:

14 (A) that following the close of early voting the Personal  
15 Electronic Ballot (PEB) and the Programable Memory Chip is  
16 removed and replaced with a Personal Electronic Ballot (PEB)  
17 and a Programable Memory Chip prepared for, but unused,  
18 during the current election period;

19 (B) that the printed paper trail used during the early voting  
20 period is removed and replaced with a new paper trail; and

21 (C) that the vote recording device is retested prior to the  
22 device being used on election day.

23 (2) Any Personal Electronic Ballot (PEB), Programable  
24 Memory Chip and printed paper trail removed from a vote  
25 recording device used for early voting shall be securely stored  
26 by the county clerk until such time as it is used to tally the votes  
27 on election day in accordance with section twenty-seven of this  
28 article.

29 (c)(1) A test performed pursuant to this section shall be  
30 open to representatives of the political parties, candidates, the  
31 press and the public. It is to be conducted five times by process-  
32 ing two separate sets of a preaudited group of ballots or ballot  
33 cards as appropriate, punched or marked as to record a predeter-  
34 mined number of valid votes for each candidate or each  
35 measure. It includes for each multicandidate office one or more  
36 ballot cards which have cross-over votes in order to test the  
37 ability of the automatic tabulating equipment to record those  
38 votes in accordance with the provisions of this article and

39 applicable law, and it includes for each office one or more  
40 ballot cards which have votes in excess of the number allowed  
41 by law in order to test the ability of the automatic tabulating  
42 equipment to reject votes. If, in the process of any of the test  
43 counts, any error is detected, the cause of the error is to be  
44 ascertained and corrective action promptly taken. After the  
45 completion of the corrective action, the test counts are to  
46 continue, including a retesting of those precincts previously test  
47 counted. Prior to the continuation of the testing, the county  
48 commission shall certify in writing, signed by them, the nature  
49 of the error, the cause thereof and the type of corrective action  
50 taken. The certification is to be recorded in the office of the  
51 clerk of the county commission in the miscellaneous record  
52 book. Immediately after conclusion of this completed test, a  
53 certified duplicate copy of the program deck is to be sent by  
54 certified mail to the offices of the state election commission,  
55 where it is to be preserved and secured for one year, and made  
56 available for comparison or analysis by order of a circuit court  
57 or the supreme court of appeals.

58 (2) The program deck to be used in the election is to  
59 immediately be certified by the county commission to be free  
60 from error as determined by the test, is to be placed with the  
61 certification in a sealed container and kept under individual  
62 multiple locks with individual keys for each lock. The number  
63 of locks and keys are the same as the number of county  
64 commissioners together with the county clerk, with each  
65 commissioner and the county clerk having a single key in his or  
66 her possession. The sealed container is to be opened to conduct  
67 the test required to be conducted immediately before the start  
68 of the official count.

69 (3) The test is to be repeated immediately before the start  
70 of the official count. The test is to also be conducted at the  
71 conclusion of the official count before the count is approved as

72 errorless and before the election returns are approved as  
73 official.

74 (4) All results of all of the tests are to be immediately  
75 certified by the county commission and filed in the office of the  
76 clerk of the county commission and immediately recorded in  
77 the miscellaneous record book. On completion of the count, the  
78 program deck, test materials and ballot cards are to be sealed,  
79 except for purposes of the canvass as provided in section  
80 twenty-eight of this article, and retained and kept under  
81 individual multiple locks and individual keys for each lock.

82 (5) The numbers of locks and keys are the same as the  
83 number of county commissioners together with the county  
84 clerk, with each commissioner and the county clerk having a  
85 single key in his or her possession.

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

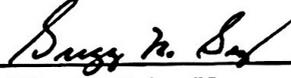
  
Chairman Senate Committee

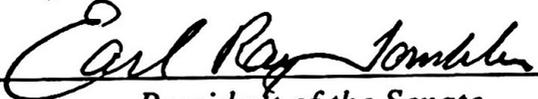
  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

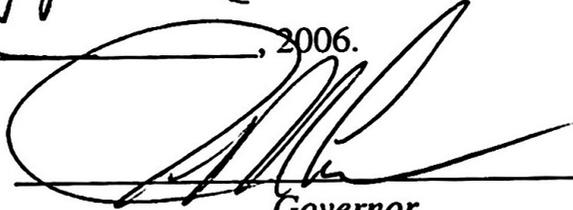
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 29<sup>th</sup>  
day of March, 2006.

  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 22 2006

Time 3:55 p