WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2006

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4489

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

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Passed March 10, 2006

In Effect Ninety Days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4489

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

[Passed March 10, 2006; in effect ninety days from passage.]

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.
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 publication area for the 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 ballots 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 ballots shall then be secured in double lock rooms. The 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 ballots for transportation to the polls. Upon such removal of the devices and ballots, the 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 ballots were found to be sealed when removed for transportation to the polls.

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

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 clerk of the county commission to receive the necessary election records, books and supplies required by law. The election commissioners shall receive the per diem mileage rate prescribed by law for this service. The 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. The 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-26. Test of automatic tabulating equipment.

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

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

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

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

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

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

(c)(1) A test performed pursuant to this section shall be open to representatives of the political parties, candidates, the press and the public. It is to be conducted five times by processing two separate sets of a preaudited group of ballots or ballot cards as appropriate, punched or marked as to record a predetermined number of valid votes for each candidate or each measure. It includes for each multicandidate office one or more ballot cards which have cross-over votes in order to test the ability of the automatic tabulating equipment to record those votes in accordance with the provisions of this article and
applicable law, and it includes for each office one or more
ballot cards which have votes in excess of the number allowed
by law in order to test the ability of the automatic tabulating
equipment to reject votes. If, in the process of any of the test
counts, any error is detected, the cause of the error is to be
ascertained and corrective action promptly taken. After the
completion of the corrective action, the test counts are to
continue, including a retesting of those precincts previously test
counted. Prior to the continuation of the testing, the county
commission shall certify in writing, signed by them, the nature
of the error, the cause thereof and the type of corrective action
taken. The certification is to be recorded in the office of the
clerk of the county commission in the miscellaneous record
book. Immediately after conclusion of this completed test, a
certified duplicate copy of the program deck is to be sent by
certified mail to the offices of the state election commission,
where it is to be preserved and secured for one year, and made
available for comparison or analysis by order of a circuit court
or the supreme court of appeals.

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

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

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

(5) The numbers of locks and keys are the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his 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 29th day of March, 2006.

Governor