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WEST VIRGINIA LEGISLATURE

EIGHTIETH LEGISLATURE

REGULAR SESSION, 2011

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 495

(SENATORS PALUMBO AND PLYMALE, ORIGINAL SPONSORS)

[PASSED MARCH 11, 2011; IN EFFECT FROM PASSAGE.]

SB 495

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OFFICE OF THE CLERK
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 495

(SENATORS PALUMBO AND PLYMALE, *original sponsors*)

[Passed March 11, 2011; in effect from passage.]

AN ACT to repeal §3-4A-13a of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-4A-2, §3-4A-3, §3-4A-4, §3-4A-6, §3-4A-9, §3-4A-9a, §3-4A-9b, §3-4A-10, §3-4A-10a, §3-4A-13, §3-4A-17, §3-4A-19, §3-4A-20 and §3-4A-27, all relating generally to the use of electronic voting systems; defining terms; setting forth the requirements of electronic voting systems; requiring public meetings held on adopting electronic voting be held at least six months prior to the next election; providing that if an electronic voting system is terminated, it must be replaced by an electronic voting system that complies with federal law; deleting the requirement that the purchase or lease of vote-recording devices must be paid in cash; deleting outmoded terms and voting systems no longer being used; updating technical terminology; requiring at least two vote-recording devices be provided at each precinct in a primary election; and providing that independent voters may vote in primaries as otherwise provided in code.

Be it enacted by the Legislature of West Virginia:

That §3-4A-13a of the Code of West Virginia, 1931, as amended, be repealed; and that §3-4A-2, §3-4A-3, §3-4A-4, §3-4A-6, §3-4A-9, §3-4A-9a, §3-4A-9b, §3-4A-10, §3-4A-10a, §3-4A-13, §3-4A-17, §3-4A-19, §3-4A-20 and §3-4A-27 of said code be amended and reenacted, all to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-2. Definitions.

- 1 As used in this article, unless otherwise specified:
- 2 (1) "Automatic tabulating equipment" means all apparatus
3 necessary to electronically count votes recorded on ballots
4 and tabulate the results;
- 5 (2) "Ballot" means an electronic image or paper on which
6 votes may be recorded by means of perforating or marking
7 with electronically sensible ink or pencil or a screen upon
8 which votes may be recorded by means of a stylus or by
9 means of touch;
- 10 (3) "Central counting center" means a facility equipped
11 with suitable and necessary automatic tabulating equipment,
12 selected by the county commission, for the electronic
13 counting of votes recorded on ballots;
- 14 (4) "Electronic poll book" means an electronic device
15 containing the same voter registration information main-
16 tained by the county clerk in a printed poll book.
- 17 (5) "Electronic voting system" is a means of conducting an
18 election whereby votes are recorded on ballots by means of
19 an electronically sensible marking ink, by perforating or are
20 recorded on equipment that registers votes on a computer
21 disk, or by touching a screen with a stylus or by means of
22 touch, and votes are subsequently counted by automatic
23 tabulating equipment at the central counting center;
- 24 (6) "Standard validation test deck" means a group of
25 ballots wherein all voting possibilities which can occur in an
26 election are represented; and

27 (7) "Vote-recording device" means equipment in which
28 ballots are placed to allow a voter to record his or her vote
29 by electronically sensible ink, or pencil, or a screen upon
30 which votes may be recorded by means of a stylus or by
31 means of touch.

§3-4A-3. Procedure for adopting electronic voting systems.

1 An electronic voting system that has been approved in
2 accordance with section eight of this article may be adopted
3 for use in general, primary and special elections in any
4 county by the following procedure and not otherwise:

5 By a majority of the members of the county commission
6 voting to adopt the same at a public meeting regularly called
7 for that purpose: *Provided*, That the meeting be held not less
8 than six months prior to the next scheduled primary or
9 general election, with notice published as a Class II-0 legal
10 advertisement in compliance with the provisions of article
11 three, chapter fifty-nine of this code. The publication area
12 for such publication shall be the county involved.

§3-4A-4. Procedure for terminating use of electronic voting systems.

1 The use of an electronic voting system may be terminated:

2 (1) By a majority of the members of the county commission
3 voting to terminate use of the system and replace it with a
4 different voting system meeting the requirements of the Help
5 America Vote Act of 2002, 42 U.S.C. §15301, *et seq.* at a
6 special public meeting called for the purpose of said termina-
7 tion, with due notice thereof published as a Class II-O legal
8 advertisement in compliance with the provisions of article
9 three, chapter fifty-nine of this code, and the publication
10 area for such publication shall be the county involved:
11 *Provided*, That such meeting shall be held not less than six
12 months prior to a general election or six months prior to a
13 primary election. If at such meeting, such county commission
14 shall enter an order of its intention to terminate use of an

15 electronic voting system, it shall thereafter forthwith cause
16 to be published a certified copy of such order as a Class II-O
17 legal advertisement in compliance with the provisions of
18 article three, chapter fifty-nine of this code, and the publica-
19 tion area for such publication shall be the county involved.
20 The first publication of such order shall not be less than
21 twenty days after the entry of such order. Such county
22 commission shall not terminate the use of an electronic
23 voting system until ninety days after the entry of such order
24 of its intention to terminate the same. Promptly after the
25 expiration of ninety days after the entry of such order of
26 intention to terminate the use of an electronic voting system,
27 if no petition has theretofore been filed with such county
28 commission requesting a referendum on the question of
29 termination of the electronic voting system as hereinafter
30 provided, such county commission shall enter a final order
31 terminating the use of the electronic voting system, and the
32 use of electronic voting system shall thereby be terminated.
33 If a petition has been submitted as provided in this subdivi-
34 sion, the county commission shall not terminate the use of
35 the system but shall proceed as provided in this subdivision.

36 If five percent or more of the registered voters of such
37 county shall sign a petition requesting that the use of an
38 electronic voting system be terminated in such county and
39 such petition be filed with the county commission of such
40 county within ninety days after the entry of such order of
41 intention to terminate the use of an electronic voting system,
42 such county commission shall submit to the voters of such
43 county at the next general or primary election, whichever
44 shall first occur, the question: "Shall the use of an electronic
45 voting system be terminated in County?" If this
46 question be answered in the affirmative by a majority of the
47 voters in such election upon the question, the use of an
48 electronic voting system shall thereby be terminated. If such
49 question shall not be answered in the affirmative by such
50 majority, the use of an electronic voting system shall con-
51 tinue.

52 (2) By the affirmative vote of a majority of the voters of
 53 such county voting upon the question of termination of the
 54 use of an electronic voting system in such county. If five
 55 percent or more of the registered voters of such county shall
 56 sign a petition requesting the termination of the use of an
 57 electronic voting system in such county, and such petition be
 58 filed with the county commission of such county, such county
 59 commission shall submit to the voters of such county at the
 60 next general or primary election, following by not less than
 61 ninety days the date of the filing of such petition, the
 62 question: "Shall the use of an electronic voting system be
 63 terminated in County?" If this question be an-
 64 swered in the affirmative by a majority of the voters of such
 65 county voting upon the question, the use of an electronic
 66 voting system shall thereby be terminated. If such question
 67 shall not be answered in the affirmative by a majority of the
 68 voters of such county voting upon the question, the use of an
 69 electronic voting system shall thereby continue.

**§3-4A-6. Acquisition of vote recording devices by purchase or
 lease; acquisition of use of automatic tabulating
 equipment; counting centers.**

1 (a) A county commission may acquire vote recording
 2 devices by any one or any combination of the following
 3 methods:

4 (1) By purchasing the same and paying the purchase price
 5 from funds available from the maximum general levy or from
 6 any other lawful source; and

7 (2) By leasing the same under written contract of lease and
 8 paying the rentals from funds available from the maximum
 9 general levy or any other lawful source.

10 (b) A county commission may acquire the use of automatic
 11 tabulating equipment by leasing or renting the same under
 12 written contract of lease or rental and paying the rentals
 13 therefor from funds available from the maximum general
 14 levy or other lawful source.

15 (c) A county commission may enter into an agreement with
16 another county commission to share automatic tabulating
17 equipment if the automatic tabulating equipment may be
18 transported to the appropriate central counting centers. No
19 ballots may be transported for counting in any county other
20 than the county in which the votes were cast.

21 (d) A county commission is authorized to accept as a gift
22 the use of suitable automatic tabulating equipment.

23 (e) The county commission may also secure a counting
24 center.

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

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

5 (1) It secures or ensures the voter absolute secrecy in the
6 act of voting or, at the voter's election, provides for open
7 voting;

8 (2) It is constructed to ensure that, except in instances of
9 open voting as provided in this section, the contents of a
10 marked ballot may not be seen or known by anyone other
11 than the voter who has voted or is voting;

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

23 (4) It permits each voter to write in the names of persons
24 for whom he or she desires to vote whose names do not
25 appear upon the ballots;

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

31 (6) It contains programming media containing sequentially
32 numbered program instructions and coded or otherwise
33 protected from tampering or substitution of the media or
34 program instructions by unauthorized persons and capable
35 of tabulating all votes cast in each election;

36 (7) It contains two standard validation test decks approved
37 as to form and testing capabilities by the State Election
38 Commission;

39 (8) It correctly records and counts accurately all votes cast
40 for each candidate and for and against each question
41 appearing upon the ballots;

42 (9) It permits each voter at any election, other than a
43 primary election, to vote a straight party ticket, as provided
44 in section five, article six of this chapter, by one mark or
45 punch;

46 (10) It permits a voter in a primary election to: (A) vote
47 only for the candidates of the party for which the voter is
48 legally permitted to vote; (B) vote for the candidates, if any,
49 for nonpartisan nominations or election; and (C) vote on
50 public questions; and precludes the voter from voting for any
51 candidate seeking nomination by any other political party
52 unless that political party has determined that the voter may
53 participate in its primary election;

54 (11) It, where applicable, is provided with means for
55 sealing or electronically securing the vote recording device

56 to prevent its use and to prevent tampering with the device,
57 both before the polls are open or before the operation of the
58 vote recording device for an election is begun and immedi-
59 ately after the polls are closed or after the operation of the
60 vote recording device for an election is completed;

61 (12) It has the capacity to contain the names of candidates
62 constituting the tickets of at least nine political parties and
63 accommodates the wording of at least fifteen questions;

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

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

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

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

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

86 (F) Direct recording electronic voting machines with a
87 mandatory paper copy shall be approved by the Secretary of
88 State. The Secretary of State may promulgate rules and

89 emergency rules to implement or enforce this subsection
90 pursuant to the provisions of section five, article three,
91 chapter twenty-nine-a of this code.

92 (14) Where vote recording devices are used, they shall:

93 (A) Be durably constructed of material of good quality and
94 in a workmanlike manner and in a form which makes it
95 safely transportable;

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

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

102 (D) Be accompanied by a mechanically or electronically
103 operated instruction model which shows the arrangement of
104 the ballot, party columns or rows, and questions;

105 (15) For electronic voting systems that utilize a screen
106 upon which votes may be recorded by means of a stylus or by
107 means of touch:

108 (A) Be constructed to provide for the direct electronic
109 recording and tabulating of votes cast in a system specifi-
110 cally designed and engineered for the election application;

111 (B) Be constructed to prevent any voter from voting for
112 more than the allowable number of candidates for any office,
113 to include an audible or visual signal, or both, warning any
114 voter who attempts to vote for more than the allowable
115 number of candidates for any office or who attempts to cast
116 his or her ballot prior to its completion and are constructed
117 to include a visual or audible confirmation, or both, to the
118 voter upon completion and casting of the ballot;

119 (C) Be constructed to present the entire ballot to the voter,

120 in a series of sequential pages, and to ensure that the voter
121 sees all of the ballot options on all pages before completing
122 his or her vote and to allow the voter to review and change
123 all ballot choices prior to completing and casting his or her
124 ballot;

125 (D) Be constructed to allow election commissioners to spoil
126 a ballot where a voter fails to properly cast his or her ballot,
127 has departed the polling place and cannot be recalled by a
128 poll clerk to complete his or her ballot;

129 (E) Be constructed to allow election commissioners, poll
130 clerks, or both, to designate, mark or otherwise record
131 provisional ballots;

132 (F) Consist of devices which are independent,
133 nonnetworked voting systems in which each vote is recorded
134 and retained within each device's internal nonvolatile
135 electronic memory and contain an internal security, the
136 absence of which prevents substitution of any other device;

137 (G) Store each vote in no fewer than three separate,
138 independent, nonvolatile electronic memory components and
139 that each device contains comprehensive diagnostics to
140 ensure that failures do not go undetected;

141 (H) Contain a unique, embedded internal serial number for
142 auditing purposes for each device used to activate, retain and
143 record votes;

144 (I) Be constructed to record all preelection, election and
145 post-election activities, including all ballot images and
146 system anomalies, in each device's internal electronic
147 memory and are to be accessible in electronic or printed
148 form;

149 (J) Be constructed with a battery backup system in each
150 device to, at a minimum, prevent the loss of any votes, as
151 well as all preelection, election and post-election activities,
152 including all ballot images and system anomalies, stored in

153 the device's internal electronic memory and to allow voting
154 to continue for two hours of uninterrupted operation in case
155 of an electrical power failure; and

156 (K) Be constructed to prevent the loss of any votes, as well
157 as all preelection, election and post-election activities,
158 including all ballot images and system anomalies, stored in
159 each device's internal electronic memory even in case of an
160 electrical and battery power failure.

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

1 (a) For purposes of this section, "ballot-marking accessible
2 voting system" means a device which allows voters, includ-
3 ing voters with disabilities, to mark an optical scanning or
4 mark-sensing voting system ballot, privately and independ-
5 ently. The ballot-marking device is capable of marking voter
6 selections on an optically readable or mark-sensing ballot
7 which shall be subsequently read and tallied on state
8 certified optically readable or mark-sensing ballot tabulat-
9 ing and reporting systems. Counties are hereby permitted to
10 obtain and employ ballot-marking accessible voting systems
11 that are approved by the State Election Commission.

12 (b) The ballot-marking accessible voting device shall be a
13 completely integrated ballot-marking device that is designed
14 to allow voters to either view ballot choices through a high
15 resolution visual display or listen to ballot choices with
16 headphones and then enter ballot selections directly through
17 specially designed, integrated accessibility devices.

18 (c) Ballot-marking accessible voting systems may be used
19 for the purpose of marking or scanning optically readable or
20 mark-sensing ballots cast in all general, special and primary
21 elections and shall meet the following specific requirements:

22 (1) The ballot-marking accessible voting system, system
23 firmware and programming software must be certified by an
24 independent testing authority, according to current federal

25 voting system standards and be approved by the State
26 Elections Commission prior to entering into any contract.

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

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

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

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

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

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

44 (F) Allow blind or visually impaired voters to vote in
45 complete privacy;

46 (G) Provide voters with an opportunity to change ballot
47 selections, or correct errors, before the ballot is marked for
48 voting, including the opportunity to correct the error
49 through the issuance of a replacement ballot if the voter was
50 otherwise unable to change the ballot or correct the error;

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

54 (I) Ensure complete ballot privacy, while employing the

55 ballot-marking audio system and providing the voter with
56 the option to turn off the visual ballot display;

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

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

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

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

69 (N) Have multiple-language capability; and

70 (O) Allow the voter to verify that:

71 (i) An optical scan ballot inserted into the device at the
72 start of voting is blank; and

73 (ii) The voted optical scan ballot that is produced by the
74 device is voted as the voter intended.

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

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

1 (a) For purposes of this section, “precinct ballot-scanning

2 device” means a device used by the voter at the precinct on
3 election day or during early voting for the purpose of
4 scanning the voter’s ballot after the ballot has been voted but
5 prior to depositing the ballot into the ballot box.

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

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

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

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

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

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

29 (e) The precinct ballot-scanning device may be used for
30 tabulating election results only under the following condi-
31 tions:

32 (1) The county has at least one precinct ballot-scanning
33 device in each precinct;

34 (2) No tabulation of results is done at the precinct;

35 (3) The “tabulation memory device” may be removed from
36 the ballot-scanning device only after the polls close and the
37 votes may only be counted at the central counting center on
38 the night of the election; and

39 (4) All voters at the precinct are required to use the ballot
40 scanning device as a condition of completing their vote.

41 (f) If the optical scan ballots from each of the precincts are
42 counted at the central counting center on election night in
43 accordance with section twenty-seven of this article, and the
44 results from that count are the results finally published on
45 election night, then any county meeting each of the require-
46 ments in paragraphs (1) through (4) of subsection (e), may
47 turn off the over vote switch on the central counting device
48 since every ballot will have been evaluated for over votes by
49 the precinct scanning device.

50 (g) The Secretary of State is hereby directed to propose
51 rules and emergency rules for legislative approval in accor-
52 dance with the provisions of article three, chapter
53 twenty-nine-a of this code in accordance with the provisions
54 of this section.

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

1 (a) 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 immedi-
4 ately placed in the custody of the county clerk and shall
5 remain in his or her custody at all times except when in use
6 at an election or when in custody of a court or court officers
7 during contest proceedings. The clerk shall see that the
8 vote-recording devices and the tabulating equipment are
9 properly protected and preserved from damage or unneces-
10 sary deterioration and shall not permit any unauthorized

11 person to tamper with them. The clerk shall also keep the
12 vote-recording devices and tabulating equipment in repair
13 and prepare the same for voting.

14 (b) When a county commission elects to acquire and use
15 electronic poll books in lieu of printed poll books, the clerk
16 of the county commission shall immediately take custody of
17 the electronic poll books, which shall remain in his or her
18 custody at all times except when in use at an election or
19 when in the custody of a court or court officers during
20 contest proceedings. The clerk shall ensure that the elec-
21 tronic poll books are properly protected and preserved from
22 damage or unnecessary deteriorations and the clerk shall not
23 permit any unauthorized person to tamper with the elec-
24 tronic poll books. The clerk shall also keep the electronic
25 poll books in good repair and the clerk shall prepare the
26 electronic poll books for election day.

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

1 Where vote-recording devices are used, the county commis-
2 sion of each county shall, upon the close of registration,
3 review the total number of active registered voters and the
4 number of registered voters of each party in each precinct.
5 Prior to each election, the commission shall determine the
6 number of voting devices needed to accommodate voters
7 without long delays and shall assign an appropriate number
8 to each precinct. For the purposes of the primary election,
9 the commission shall assign the number of vote recording
10 devices in each precinct to be prepared for each party based
11 as nearly as practicable on the proportion of registered
12 voters of each party to the total: *Provided*, That a minimum
13 of two vote-recording devices be provided.

**§3-4A-13. Inspection of ballots, electronic poll books and
vote-recording devices; duties of county commis-
sion, ballot commissioners and election commis-
sioners; records relating to ballots and
vote-recording devices; receipt of election materi-
als by ballot commissioners.**

1 (a) When the clerk of the county commission has completed
2 the preparation of the ballots and of any electronic poll
3 books and vote-recording devices as provided in sections
4 eleven-a and twelve-a of this article and as provided in
5 section twenty-one, article one of this chapter, and not later
6 than seven days before the day of the election, he or she shall
7 notify the members of the county commission and the ballot
8 commissioners that the ballots and any electronic poll books
9 and devices are ready for use.

10 (b) The members of the county commission and the ballot
11 commissioners shall convene at the office of the clerk or at
12 such other place at which any vote-recording devices or
13 electronic poll books and the ballots are stored, not later
14 than five days before the day of the election, and shall
15 inspect the devices, electronic poll books and the ballots to
16 determine whether the requirements of this article have been
17 met. Notice of the place and time of the inspection shall be
18 published, no less than three days in advance, as a Class I-0
19 legal advertisement in compliance with the provisions of
20 article three, chapter fifty-nine of this code. The publication
21 area is the county involved.

22 (c) Any candidate and one representative of each political
23 party on the ballot may be present during the examination.
24 If the devices and electronic poll books and ballots are found
25 to be in proper order, the members of the county commission
26 and the ballot commissioners shall endorse their approval in
27 the book in which the clerk entered the numbers of the
28 devices opposite the numbers of the precincts.

29 (d) The vote-recording devices, the electronic poll books
30 and the ballots shall then be secured in double lock rooms.
31 The clerk and the president or president pro tempore of the
32 county commission shall each have a key. The rooms shall be
33 unlocked only in their presence and only for the removal of
34 the devices, electronic poll books and the ballots for trans-
35 portation to the polls. Upon removal of the devices, the
36 electronic poll books and the ballots, the clerk and president
37 or president pro tempore of the county commission shall

38 certify in writing signed by them that the devices, the
39 electronic poll books and packages of ballots were found to
40 be sealed when removed for transportation to the polls.

41 (e) Vote-recording devices used during the early voting
42 period may be used on election day if retested in accordance
43 with all the provisions of this section, including public notice
44 between the close of early voting and prior to precinct
45 placement for election day. Vote-recording devices must
46 comply with the applicable requirements of section
47 twenty-six of this article.

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

**§3-4A-17. Check of vote-recording devices and electronic poll
books before use; corrections; reserve
vote-recording devices.**

1 (a) Any reserve vote-recording device used is to be pre-
2 pared for use by the clerk or his or her duly appointed
3 deputy and the reserve vote-recording device is to be
4 prepared, inspected and sealed and delivered to the polling
5 place wherein the seal is to be broken and the device opened
6 in the presence of the precinct election commissioners who
7 shall certify in writing signed by them to the clerk of the
8 county commission, that the reserve vote-recording device
9 was found to be sealed upon delivery to the polling place,

10 that the seal was broken and the device opened in their
11 presence at the polling place.

12 (b) In counties using electronic poll books, the election
13 commissioners shall examine the electronic poll books to
14 ascertain whether the poll books are in working order before
15 allowing any voters to enter the polling location. If the
16 electronic poll books are not in working order, the election
17 commissioners shall contact the county clerk who shall
18 immediately authorize a printed poll book to serve in place
19 of the electronic poll book for that election. A printed poll
20 book may accompany the electronic poll book to each
21 precinct.

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

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

5 (b) In primary elections, before a voter is permitted to
6 occupy the voting booth, the election commissioner repre-
7 senting the party to which the voter belongs shall direct the
8 voter to the vote-recording device or supply the voter with a
9 ballot, as may be appropriate, which will allow the voter to
10 vote only for the candidates who are seeking nomination on
11 the ticket of the party with which the voter is affiliated or for
12 unaffiliated voters in accordance with section thirty-one,
13 article two of this chapter.

14 (c) The poll clerk shall issue to each voter when he or she
15 signs the poll book a printed card or ticket numbered to
16 correspond to the number on the poll book of the voter and
17 in the case of a primary election, indicating the party
18 affiliation of the voter, which numbered card or ticket is to
19 be presented to the election commissioner in charge of the
20 voting booth.

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

43 (e) Upon entering a precinct which is using an electronic
44 poll book, each voter shall be verified by use of the electronic
45 poll book to be a registered voter. If the voter is not regis-
46 tered according to the electronic poll book within that
47 precinct, the poll clerk is to inform the voter of the proper
48 precinct in which the voter is registered.

49 (f) Where applicable, each voter shall be instructed how to
50 operate the vote-recording device before he or she enters the
51 voting booth.

52 (g) Where applicable, any voter who spoils, defaces or
53 mutilates the ballot delivered to him or her, on returning the
54 ballot to the poll clerks, shall receive another in its place.
55 Every person who does not vote any ballot delivered to him
56 or her shall, before leaving the election room, return the
57 ballot to the poll clerks. When a spoiled or defaced ballot is

58 returned, the poll clerks shall make a minute of the fact on
59 the poll books, at the time, write the word "spoiled" across
60 the face of the ballot and place it in an envelope for spoiled
61 ballots.

62 Immediately on closing the polls, the election commission-
63 ers shall ascertain the number of spoiled ballots during the
64 election and the number of ballots remaining not voted. The
65 election commissioners shall also ascertain from the poll
66 books the number of persons who voted and shall report, in
67 writing signed by them to the clerk of the county commis-
68 sion, any irregularities in the ballot boxes, the number of
69 ballots cast, the number of ballots spoiled during the election
70 and the number of ballots unused. All unused ballots are to
71 be returned at the same time to the clerk of the county
72 commission who shall count them and record the number.
73 All unused ballots shall be stored with the other election
74 materials and destroyed at the expiration of twenty-two
75 months.

76 (h) Each commissioner who is a member of an election
77 board which fails to account for every ballot delivered to it
78 is guilty of a misdemeanor and, upon conviction thereof,
79 shall be fined not more than \$1,000 or confined in jail for not
80 more than one year, or both.

81 (i) The board of ballot commissioners of each county, or the
82 chair of the board, shall preserve the ballots that are left
83 over in their hands, after supplying the precincts as pro-
84 vided, until the close of the polls on the day of election and
85 shall deliver them to the clerk of the county commission who
86 shall store them with the other election materials and
87 destroy them at the expiration of twenty-two months.

88 (j) Where ballots are used, the voter, after he or she has
89 marked his or her ballot, shall, before leaving the voting
90 booth, place the ballot inside the envelope or sleeve provided
91 for this purpose, with the stub extending outside the enve-
92 lope, and return it to an election commissioner who shall
93 remove the stub and deposit the envelope, if applicable, with

94 the ballot inside in the ballot box. No ballot from which the
95 stub has been detached may be accepted by the officer in
96 charge of the ballot box, but the ballot shall be marked
97 "spoiled" and placed with the spoiled ballots. If an electronic
98 voting system is used that utilizes a screen on which votes
99 may be recorded by means of a stylus or by means of touch
100 and the signal warning that a voter has attempted to cast his
101 or her ballot has failed to do so properly has been activated
102 and the voter has departed the polling place and cannot be
103 recalled by a poll clerk to complete his or her ballot while
104 the voter remains physically present in the polling place,
105 then two election commissioners of different registered party
106 affiliations, two poll clerks of different registered party
107 affiliations or an election commissioner and a poll clerk of
108 different registered party affiliations shall spoil the ballot.

109 (k) The precinct election commissioners shall prepare a
110 report in quadruplicate of the number of voters who have
111 voted and, where electronic voting systems are used that
112 utilize a screen on which votes may be recorded by means of
113 a stylus or by means of touch, the number of ballots that
114 were spoiled, as indicated by the poll books, and shall place
115 two copies of this report in the ballot box or where electronic
116 voting systems are used that utilize a screen upon which
117 votes may be recorded by means of a stylus or by means of
118 touch, shall place two copies of this report and the electronic
119 ballot devices in a container provided by the clerk of the
120 county commission, which thereupon is to be sealed with a
121 paper seal signed by the election commissioners to ensure
122 that no additional ballots may be deposited or removed from
123 the ballot box. Two election commissioners of different
124 registered party affiliations or two special messengers of
125 different registered party affiliations appointed by the clerk
126 of the county commission, shall forthwith deliver the ballot
127 box or container to the clerk of the county commission at the
128 central counting center and receive a signed numbered
129 receipt therefor. The receipt must carefully set forth in detail
130 any and all irregularities pertaining to the ballot boxes or
131 containers and noted by the precinct election officers.

132 The receipt is to be prepared in duplicate, a copy of which
133 remains with the clerk of the county commission who shall
134 have any and all irregularities noted. The time of their
135 departure from the polling place is to be noted on the two
136 remaining copies of the report, which are to be immediately
137 mailed to the clerk of the county commission.

138 (l) The poll books, register of voters, unused ballots, spoiled
139 ballots and other records and supplies are to be delivered to
140 the clerk of the county commission, all in conformity with
141 the provisions of this section.

§3-4A-20. Non-affiliated voters in primary elections.

1 Unless a voter, not affiliated with a party, is permitted to
2 participate in the primary election of a political party, the
3 following provisions apply to voters, not affiliated with a
4 party, in primary elections that include non-partisan
5 candidates or public questions:

6 (1) Election officers shall provide a vote recording device,
7 where applicable, or the appropriate ballot to be marked by
8 an electronically sensible pen or ink, or by means of a stylus
9 or by means of touch or by other electronic means, so that
10 voters not affiliated with a party may vote only those
11 portions of the ballot relating to the nonpartisan candidates
12 and the public questions submitted, or shall provide a ballot
13 containing only provisions for voting for those candidates
14 and upon those issues submitted common to the ballots
15 provided to all voters regardless of political party affiliation,
16 or both.

17 (2) In counties utilizing electronic voting systems in which
18 votes are recorded by perforating, if vote recording devices
19 are not available for the voters not affiliated with a party,
20 provisions are to be made for sealing the partisan section or
21 sections of the ballot or ballot labels on a vote recording
22 device using temporary seals, thus permitting the voter not
23 affiliated with a party to vote for the nonpartisan section or
24 sections of the ballot or ballot labels.

25 (3) After a voter not affiliated with a party has voted,
26 temporary seals may be removed and the device may then be
27 used by partisan voters.

§3-4A-27. Proceedings at the central counting center.

1 (a) All proceedings at the central counting center are to be
2 under the supervision of the clerk of the county commission
3 and are to be conducted under circumstances which allow
4 observation from a designated area by all persons entitled to
5 be present. The proceedings shall take place in a room of
6 sufficient size and satisfactory arrangement to permit
7 observation. Those persons entitled to be present include all
8 candidates whose names appear on the ballots being counted
9 or if a candidate is absent, a representative of the candidate
10 who presents a written authorization signed by the candidate
11 for the purpose and two representatives of each political
12 party on the ballot who are chosen by the county executive
13 committee chairperson. A reasonable number of the general
14 public is also freely admitted to the room. In the event all
15 members of the general public desiring admission to the
16 room cannot be admitted at one time, the county commission
17 shall provide for a periodic and convenient rotation of
18 admission to the room for observation, to the end that each
19 member of the general public desiring admission, during the
20 proceedings at the central counting center, is to be granted
21 admission for reasonable periods of time for observation:
22 *Provided*, That no person except those authorized for the
23 purpose may touch any ballot or ballot card or other official
24 records and papers utilized in the election during observa-
25 tion.

26 (b) All persons who are engaged in processing and counting
27 the ballots are to work in teams consisting of two persons of
28 opposite political parties, and are to be deputized in writing
29 and take an oath that they will faithfully perform their
30 assigned duties. These deputies are to be issued an official
31 badge or identification card which is assigned an identity
32 control number and the deputies are to prominently wear on
33 his or her outer garments the issued badge or identification
34 card. Upon completion of the deputies' duties, the badges or
35 identification cards are to be returned to the county clerk.

36 (c) Ballots are to be handled and tabulated and the write-in
37 votes tallied according to procedures established by the
38 Secretary of State, subject to the following requirements:

39 (1) In systems using ballots marked with electronically
40 sensible ink, ballots are to be removed from the boxes and
41 stacked for the tabulator which separates ballots containing
42 marks for a write-in position. Immediately after tabulation,
43 the valid write-in votes are to be tallied. No write-in vote
44 may be counted for an office unless the voter has entered the
45 name of an official write-in candidate for that office on the
46 line provided, either by writing, affixing a sticker or placing
47 an ink-stamped impression thereon;

48 (2) In systems using ballots in which votes are recorded
49 upon screens with a stylus or by means of touch, the person-
50 alized electronic ballots are to be removed from the contain-
51 ers and stacked for the tabulator. Systems using ballots in
52 which votes are recorded upon screens with a stylus or by
53 means of touch are to tally write-in ballots simultaneously
54 with the other ballots;

55 (3) When more than one person is to be elected to an office
56 and the voter desires to cast write-in votes for more than one
57 official write-in candidate for that office, a single punch or
58 mark, as appropriate for the voting system, in the write-in
59 location for that office is sufficient for all write-in choices.
60 When there are multiple write-in votes for the same office
61 and the combination of choices for candidates on the ballot
62 and write-in choices for the same office exceed the number
63 of candidates to be elected, the ballot is to be duplicated or
64 hand counted, with all votes for that office rejected;

65 (4) Write-in votes for nomination for any office and
66 write-in votes for any person other than an official write-in
67 candidate are to be disregarded;

68 (5) When a voter casts a straight ticket vote and also marks
69 the location for a write-in vote for an office, the straight
70 ticket vote for that office is to be rejected, whether or not a
71 vote can be counted for a write-in candidate; and

72 (6) Official write-in candidates are those who have filed a
73 write-in candidate's certificate of announcement and have
74 been certified according to the provisions of section four-a,
75 article six of this chapter.

76 (d) If any ballot card is damaged or defective so that it
77 cannot properly be counted by the automatic tabulating
78 equipment, a true duplicate copy is to be made of the
79 damaged ballot card in the presence of representatives of
80 each political party on the ballot and substituted for the
81 damaged ballot card. All duplicate ballot cards are to be
82 clearly labeled "duplicate" and are to bear a serial number
83 which is recorded on the damaged or defective ballot card
84 and on the replacement ballot card.

85 (e) The returns printed by the automatic tabulating
86 equipment at the central counting center, to which have been
87 added write-in and other valid votes, are, when certified by
88 the clerk of the county commission, to constitute the official
89 preliminary returns of each precinct or election district.
90 Further, all the returns are to be printed on a precinct basis.
91 Periodically throughout and upon completion of the count,
92 the returns are to be open to the public by posting the
93 returns as have been tabulated precinct by precinct at the
94 central counting center. Upon completion of the canvass, the
95 returns are to be posted in the same manner.

96 (f) If for any reason it becomes impracticable to count all
97 or a part of the ballots with tabulating equipment, the
98 county commission may direct that they be counted manu-
99 ally, following as far as practicable the provisions governing
100 the counting of paper ballots.

101 (g) As soon as possible after the completion of the count,
102 the clerk of the county commission shall have the vote
103 recording devices properly boxed or securely covered and
104 removed to a proper and secure place of storage.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
Acting President of the Senate

[Signature]
.....
Speaker of the House of Delegates

FILED
2011 APR -1 AM 11:19
SECRETARY OF STATE

The within *is approved* this the *3/8*
Day of *March*, 2011.

[Signature]
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 22 2011

Time 3:45 pm