WEST VIRGINIA LEGISLATURE
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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That §3-4A-13a of the Code of West Virginia, 1931, as amended, be repealed; and that §3-4A-2, §3-4A-3, §3-4A-4, §3-4A-6, §3-4A-9, §3-4A-9a, §3-4A-9b, §3-4A-10, §3-4A-10a, §3-4A-13, §3-4A-17, §3-4A-19, §3-4A-20 and §3-4A-27 of said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 necessary to electronically count votes recorded on ballots and tabulate the results;

3 (2) “Ballot” means an electronic image or paper on which votes may be recorded by means of perforating or marking with electronically sensible ink or pencil or a screen upon which votes may be recorded by means of a stylus or by means of touch;

4 (3) “Central counting center” means a facility equipped with suitable and necessary automatic tabulating equipment, selected by the county commission, for the electronic counting of votes recorded on ballots;

5 (4) “Electronic poll book” means an electronic device containing the same voter registration information maintained by the county clerk in a printed poll book.

6 (5) “Electronic voting system” is a means of conducting an election whereby votes are recorded on ballots by means of an electronically sensible marking ink, by perforating or are recorded on equipment that registers votes on a computer disk, or by touching a screen with a stylus or by means of touch, and votes are subsequently counted by automatic tabulating equipment at the central counting center;

7 (6) “Standard validation test deck” means a group of ballots wherein all voting possibilities which can occur in an election are represented; and
(7) “Vote-recording device” means equipment in which ballots are placed to allow a voter to record his or her vote by electronically sensible ink, or pencil, or a screen upon which votes may be recorded by means of a stylus or by means of touch.

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

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

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

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

The use of an electronic voting system may be terminated:

(1) By a majority of the members of the county commission voting to terminate use of the system and replace it with a different voting system meeting the requirements of the Help America Vote Act of 2002, 42 U.S.C. §15301, et seq. at a special public meeting called for the purpose of said termination, with due notice thereof published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved: Provided, That such meeting shall be held not less than six months prior to a general election or six months prior to a primary election. If at such meeting, such county commission shall enter an order of its intention to terminate use of an
electronic voting system, it shall thereafter forthwith cause
to be published a certified copy of such order as a Class II-O
legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and the publica-
tion area for such publication shall be the county involved.
The first publication of such order shall not be less than
twenty days after the entry of such order. Such county
commission shall not terminate the use of an electronic
voting system until ninety days after the entry of such order
of its intention to terminate the same. Promptly after the
expiration of ninety days after the entry of such order of
intention to terminate the use of an electronic voting system,
if no petition has theretofore been filed with such county
commission requesting a referendum on the question of
termination of the electronic voting system as hereinafter
provided, such county commission shall enter a final order
terminating the use of the electronic voting system, and the
use of electronic voting system shall thereby be terminated.
If a petition has been submitted as provided in this subdivi-
sion, the county commission shall not terminate the use of
the system but shall proceed as provided in this subdivision.

If five percent or more of the registered voters of such
county shall sign a petition requesting that the use of an
electronic voting system be terminated in such county and
such petition be filed with the county commission of such
county within ninety days after the entry of such order of
intention to terminate the use of an electronic voting system,
such county commission shall submit to the voters of such
county at the next general or primary election, whichever
shall first occur, the question: “Shall the use of an electronic
voting system be terminated in ................... County?” If this
question be answered in the affirmative by a majority of the
voters in such election upon the question, the use of an
electronic voting system shall thereby be terminated. If such
question shall not be answered in the affirmative by such
majority, the use of an electronic voting system shall con-
tinue.
§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 devices by any one or any combination of the following methods:

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

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

10 (b) A county commission may acquire the use of automatic tabulating equipment by leasing or renting the same under written contract of lease or rental and paying the rentals therefor from funds available from the maximum general levy or other lawful source.
(c) A county commission may enter into an agreement with another county commission to share automatic tabulating equipment if the automatic tabulating equipment may be transported to the appropriate central counting centers. No ballots may be transported for counting in any county other than the county in which the votes were cast.

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

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

§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, except in instances of open voting as provided in this section, the contents of a marked ballot may not be seen or known by anyone other than the voter who 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 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 write in the names of persons for whom he or she desires to vote whose names do not appear upon the ballots;

(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 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;

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

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

(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 the device, 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 vote 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) Bear a number that will identify it or distinguish it
from any other machine;

(C) 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;

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

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

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

(B) 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;

(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 preélection, 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 preélection, election and post-election activities,
152 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

(K) Be constructed to 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
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;
in minimum requirements.

(a) For purposes of this section, “ballot-marking accessible
voting system” means a device which allows voters, includ-
ing voters with disabilities, to mark an optical scanning or
mark-sensing voting system ballot, privately and independ-
ently. 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 tabulat-
ing 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 devices.

(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
(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 may be used for tabulating election results only under the following conditions:

(1) The county has at least one precinct ballot-scanning device in each precinct;
(2) No tabulation of results is done at the precinct;

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

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

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

(g) 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-10. County clerk to be custodian of vote-recording devices, tabulating equipment and electronic poll books; duties.

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

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

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

Where vote-recording devices are used, the county commission of each county shall, upon the close of registration, review the total number of active registered voters and the number of registered voters of each party in each precinct. Prior to each election, the commission shall determine the number of voting devices needed to accommodate voters without long delays and shall assign an appropriate number to each precinct. For the purposes of the primary election, the commission shall assign the number of vote recording devices in each precinct to be prepared for each party based as nearly as practicable on the proportion of registered voters of each party to the total: Provided, That a minimum of two vote-recording devices be provided.

§3-4A-13. Inspection of ballots, electronic poll books 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.
(a) When the clerk of the county commission has completed the preparation of the ballots and of any electronic poll books and vote-recording devices as provided in sections eleven-a and twelve-a 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 any electronic poll books and devices are ready for use.

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

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

(d) The vote-recording devices, the electronic poll books 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, electronic poll books and the ballots for transportation to the polls. Upon removal of the devices, the electronic poll books and the ballots, the clerk and president or president pro tempore of the county commission shall
certify in writing signed by them that the devices, the
electronic poll books and packages of ballots were found to
be sealed when removed for transportation to the polls.

(e) 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 must
comply with the applicable requirements of section
twenty-six of this article.

(f) Not later than one day before the election, the election
commissioner of each precinct 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 commis-
ers 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-17. Check of vote-recording devices and electronic poll
books before use; corrections; reserve
vote-recording devices.

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

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

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

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

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

(c) The poll clerk shall issue to each voter when he or she signs the poll book a printed card or ticket numbered to correspond to the number on the poll book of the voter and in the case of a primary election, indicating the party affiliation of the voter, which numbered card or ticket is to be presented to the election commissioner in charge of the voting booth.
(d) One hour before the opening of the polls the precinct election commissioners shall arrive at the polling place and set up the voting booths in clear view of the election commissioners. Where applicable, they shall open the vote-recording devices, place them in the voting booths, examine them to see that they have the correct ballots by comparing them with the sample ballots, and determine whether they are in proper working order. They shall open and check the ballots, the electronic poll books, if applicable, supplies, records and forms and post the sample ballots and instructions to voters. Upon ascertaining that all ballots, supplies, electronic poll books, if applicable, records and forms arrived intact, the election commissioners shall certify their findings in writing upon forms provided and collected by the clerk of the county commission over their signatures to the clerk of the county commission. Any discrepancies are to be noted and reported immediately to the clerk of the county commission. The election commissioners shall then number in sequential order the ballot stub of each ballot in their possession and report in writing to the clerk of the county commission the number of ballots received. They shall issue the ballots in sequential order to each voter.

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

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

(g) Where applicable, any voter who spoils, defaces or mutilates the ballot delivered to him or her, on returning the ballot to the poll clerks, shall receive another in its place. Every person who does not vote any ballot delivered to him or her shall, before leaving the election room, return the 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
the ballot inside in the ballot box. No ballot from which the stub has been detached may be accepted by the officer in charge of the ballot box, but the ballot shall be marked “spoiled” and placed with the spoiled ballots. If an electronic voting system is used that utilizes a screen on which votes may be recorded by means of a stylus or by means of touch and the signal warning that a voter has attempted to cast his or her ballot has failed to do so properly has been activated and the voter has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot while the voter remains physically present in the polling place, then two election commissioners of different registered party affiliations, two poll clerks of different registered party affiliations or an election commissioner and a poll clerk of different registered party affiliations shall spoil the ballot.

(k) The precinct election commissioners shall prepare a report in quadruplicate of the number of voters who have voted and, where electronic voting systems are used that utilize a screen on which votes may be recorded by means of a stylus or by means of touch, the number of ballots that were spoiled, as indicated by the poll books, and shall place two copies of this report in the ballot box or where electronic voting systems are used that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, shall place two copies of this report and the electronic ballot devices in a container provided by the clerk of the county commission, which thereupon is to be sealed with a paper seal signed by the election commissioners to ensure that no additional ballots may be deposited or removed from the ballot box. Two election commissioners of different registered party affiliations or two special messengers of different registered party affiliations appointed by the clerk of the county commission, shall forthwith deliver the ballot box or container to the clerk of the county commission at the central counting center and receive a signed numbered receipt therefor. The receipt must carefully set forth in detail any and all irregularities pertaining to the ballot boxes or containers and noted by the precinct election officers.
The receipt is to be prepared in duplicate, a copy of which remains with the clerk of the county commission who shall have any and all irregularities noted. The time of their departure from the polling place is to be noted on the two remaining copies of the report, which are to be immediately mailed to the clerk of the county commission.

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

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

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

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

(2) In counties utilizing electronic voting systems in which votes are recorded by perforating, if vote recording devices are not available for the voters not affiliated with a party, provisions are to be made for sealing the partisan section or sections of the ballot or ballot labels on a vote recording device using temporary seals, thus permitting the voter not affiliated with a party to vote for the nonpartisan section or sections of the ballot or ballot labels.
(3) After a voter not affiliated with a party has voted, temporary seals may be removed and the device may then be used by partisan voters.

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

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

(b) All persons who are engaged in processing and counting the ballots are to work in teams consisting of two persons of opposite political parties, and are to be deputized in writing and take an oath that they will faithfully perform their assigned duties. These deputies are to be issued an official badge or identification card which is assigned an identity control number and the deputies are to prominently wear on his or her outer garments the issued badge or identification card. Upon completion of the deputies’ duties, the badges or identification cards are to be returned to the county clerk.
(c) Ballots are to be handled and tabulated and the write-in votes tallied according to procedures established by the Secretary of State, subject to the following requirements:

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

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

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

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

(5) When a voter casts a straight ticket vote and also marks the location for a write-in vote for an office, the straight ticket vote for that office is to be rejected, whether or not a vote can be counted for a write-in candidate; and
(6) Official write-in candidates are those who have filed a write-in candidate’s certificate of announcement and have been certified according to the provisions of section four-a, article six of this chapter.

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

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

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

(g) As soon as possible after the completion of the count, the clerk of the county commission shall have the vote recording devices properly boxed or securely covered and removed to a proper and secure place of storage.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

Acting President of the Senate

Speaker of the House of Delegates

The within is approved this the 31st Day of March, 2011.

Governor