

Senate Bill No. 495

(By Senators Palumbo and Plymale)

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[Introduced February 11, 2011; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL 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; setting forth the requirements of electronic voting systems; providing that if five percent of the registered voters in a county sign a petition not to use electronic voting for that county, the issue will be put on the ballot in that county; providing that if an electronic voting system is terminated, the one replacing it must comply with the federal Help America Vote Act of 2002; deleting the requirement that the purchase or lease of vote-recording devices must be paid in cash; and deleting outmoded terms and voting systems no longer being used.

Be it enacted by the Legislature of West Virginia:

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2 be repealed; and that §3-4A-2, §3-4A-3, §3-4A-4, §3-4A-6, §3-4A-9,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

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

7 **§3-4A-2. Definitions.**

8 As used in this article, unless otherwise specified:

9 (1) "Automatic tabulating equipment" means all apparatus
10 necessary to electronically count votes recorded on ballots and
11 tabulate the results;

12 (2) "Ballot" means ~~a tabulating card~~ an electronic image or
13 paper on which votes may be recorded by means of perforating or
14 marking with electronically sensible ink or pencil or a screen upon
15 which votes may be recorded by means of a stylus or by means of
16 touch;

17 (3) "Central counting center" means a facility equipped with
18 suitable and necessary automatic tabulating equipment, selected by
19 the county commission, for the electronic counting of votes
20 recorded on ballots;

21 (4) "Electronic poll book" means an electronic device
22 containing the same voter registration information maintained by
23 the county clerk in a printed poll book.

24 (5) "Electronic voting system" is a means of conducting an

1 election whereby votes are recorded on ballots by means of an
2 electronically sensible marking ink, by perforating or are recorded
3 on equipment that registers votes on a computer disk, or by
4 touching a screen with a stylus or by means of touch, and votes are
5 subsequently counted by automatic tabulating equipment at the
6 central counting center;

7 ~~(6) "Program deck" means the actual punch card deck or decks,~~
8 ~~or a computer program disk, diskette, tape or other programming~~
9 ~~media, containing the program for counting and tabulating the~~
10 ~~votes, including the "application program deck";~~

11 ~~(7) "Application program deck" means the punch card deck or~~
12 ~~equivalent capacity in other program medias as provided, containing~~
13 ~~specific options used and necessary to modify the program of~~
14 ~~general application, to conduct and tabulate a specific election~~
15 ~~according to applicable law;~~

16 ~~(8)~~ (6) "Standard validation test deck" means a group of
17 ballots wherein all voting possibilities which can occur in an
18 election are represented; and

19 ~~(9)~~ (7) "Vote-recording device" means equipment in which
20 ~~ballot labels and ballots are placed to allow a voter to record his~~
21 ~~or her vote by perforating or equipment with~~ electronically
22 sensible ink, or pencil, or a screen upon which votes may be
23 recorded by means of a stylus or by means of touch.

24 **§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 for
3 use in general, primary and special elections in any county by the
4 following procedure and not otherwise:

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

13 If five percent or more of the registered voters of a county
14 sign a petition requesting that the use of an electronic voting
15 system not be adopted in that county, the petition is to be filed
16 with the county commission within ninety days after the entry of
17 the order of intention to adopt the use of an electronic voting
18 system. In that instance, the county commission shall submit, at
19 the next general or primary election, whichever occurs first, to
20 the voters of the county the question: "Shall the use of an
21 electronic voting system be adopted in County?"
22 If this question be answered in the affirmative by a majority of
23 the voters in the election, the use of an electronic voting system
24 will be adopted. If the question is not answered in the

1 affirmative by such majority, the use of an electronic voting
2 system will not be adopted.

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

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

6 (1) By a majority of the members of the county commission
7 voting to terminate use of the system and replace it with a
8 different voting system meeting the requirements of the Help
9 America Vote Act of 2002, 42 U.S.C. §15301, et seq. at a special
10 public meeting called for the purpose of said termination, with due
11 notice thereof published as a Class II-O legal advertisement in
12 compliance with the provisions of article three, chapter fifty-nine
13 of this code, and the publication area for such publication shall
14 be the county involved: *Provided*, That such meeting shall be held
15 not less than six months prior to a general election or six months
16 prior to a primary election. If at such meeting, such county
17 commission shall enter an order of its intention to terminate use
18 of an electronic voting system, it shall thereafter forthwith cause
19 to be published a certified copy of such order as a Class II-O
20 legal advertisement in compliance with the provisions of article
21 three, chapter fifty-nine of this code, and the publication area
22 for such publication shall be the county involved. The first
23 publication of such order shall not be less than twenty days after
24 the entry of such order. Such county commission shall not

1 terminate the use of an electronic voting system until ninety days
2 after the entry of such order of its intention to terminate the
3 same. Promptly after the expiration of ninety days after the entry
4 of such order of intention to terminate the use of an electronic
5 voting system, if no petition has theretofore been filed with such
6 county commission requesting a referendum on the question of
7 termination of the electronic voting system as hereinafter
8 provided, such county commission shall enter a final order
9 terminating the use of the electronic voting system, and the use of
10 electronic voting system shall thereby be terminated. If a petition
11 has been submitted as provided in this subdivision, the county
12 commission shall not terminate the use of the system but shall
13 proceed as provided in this subdivision.

14 If five percent or more of the registered voters of such
15 county shall sign a petition requesting that the use of an
16 electronic voting system be terminated in such county and such
17 petition be filed with the county commission of such county within
18 ninety days after the entry of such order of intention to terminate
19 the use of an electronic voting system, such county commission
20 shall submit to the voters of such county at the next general or
21 primary election, whichever shall first occur, the question:
22 "Shall the use of an electronic voting system be terminated in
23 County?" If this question be answered in the
24 affirmative by a majority of the voters in such election upon the

1 question, the use of an electronic voting system shall thereby be
2 terminated. If such question shall not be answered in the
3 affirmative by such majority, the use of an electronic voting
4 system shall continue.

5 (2) By the affirmative vote of a majority of the voters of
6 such county voting upon the question of termination of the use of
7 an electronic voting system in such county. If five percent or
8 more of the registered voters of such county shall sign a petition
9 requesting the termination of the use of an electronic voting
10 system in such county, and such petition be filed with the county
11 commission of such county, such county commission shall submit to
12 the voters of such county at the next general or primary election,
13 following by not less than ninety days the date of the filing of
14 such petition, the question: "Shall the use of an electronic
15 voting system be terminated in County?" If this
16 question be answered in the affirmative by a majority of the voters
17 of such county voting upon the question, the use of an electronic
18 voting system shall thereby be terminated. If such question shall
19 not be answered in the affirmative by a majority of the voters of
20 such county voting upon the question, the use of an electronic
21 voting system shall thereby continue.

22 **§3-4A-6. Acquisition of vote recording devices by purchase or**
23 **lease; acquisition of use of automatic tabulating**
24 **equipment; counting centers.**

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

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

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

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

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

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

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

23 **§3-4A-9. Minimum requirements of electronic voting systems.**

24 An electronic voting system of particular make and design may

1 not be approved by the State Election Commission or be purchased,
2 leased or used by any county commission unless it meets the
3 following requirements:

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

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

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

20 (4) It permits each voter to ~~deposit,~~ write in ~~affix upon a~~
21 ~~ballot, card, envelope or other medium to be provided for that~~
22 ~~purpose, ballots containing~~ the names of persons for whom he or she
23 desires to vote whose names do not appear upon the ballots; ~~or~~
24 ~~ballot labels;~~

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

5 (6) It contains ~~a program deck consisting of cards that are~~
6 ~~sequentially numbered or consisting of a computer program disk,~~
7 ~~diskette, tape or other~~ programming media containing sequentially
8 numbered program instructions and coded or otherwise protected from
9 tampering or substitution of the media or program instructions by
10 unauthorized persons and capable of tabulating all votes cast in
11 each election;

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

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

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

20 (10) It permits each voter in primary elections to vote only
21 for the candidates of the party for which he or she is legally
22 permitted to vote and precludes him or her from voting for any
23 candidate seeking nomination by any other political party, permits
24 him or her to vote for the candidates, if any, for nonpartisan

1 nomination or election and permits him or her to vote on public
2 questions;

3 (11) It, where applicable, is provided with means for sealing
4 or electronically securing the vote recording device to prevent its
5 use and to prevent tampering with ~~ballot labels~~ the device, both
6 before the polls are open or before the operation of the vote
7 recording device for an election is begun and immediately after the
8 polls are closed or after the operation of the vote recording
9 device for an election is completed;

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

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

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

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

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

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

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

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

14 (A) Be durably constructed of material of good quality and in
15 a workmanlike manner and in a form which makes it safely
16 transportable;

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

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

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

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

10 ~~(F) For electronic voting systems that utilize a screen upon~~
11 ~~which votes may be recorded by means of a stylus or by means of~~
12 ~~touch, be constructed to provide for the direct electronic~~
13 ~~recording and tabulating of votes cast in a system specifically~~
14 ~~designed and engineered for the election application;~~

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

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

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

14 ~~(J) For electronic voting systems that utilize a screen upon~~
15 ~~which votes may be recorded by means of a stylus or by means of~~
16 ~~touch, be constructed to allow election commissioners, poll clerks,~~
17 ~~or both, to designate, mark or otherwise record provisional~~
18 ~~ballots;~~

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

1 ~~any other device;~~

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

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

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

19 ~~(O) For electronic voting systems that utilize a screen upon~~
20 ~~which votes may be recorded by means of a stylus or by means of~~
21 ~~touch, be constructed with a battery backup system in each device~~
22 ~~to, at a minimum, prevent the loss of any votes, as well as all~~
23 ~~preelection, election and post-election activities, including all~~
24 ~~ballot images and system anomalies, stored in the device's internal~~

1 ~~electronic memory and to allow voting to continue for two hours of~~
2 ~~uninterrupted operation in case of an electrical power failure; and~~

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

10 (15) Electronic voting systems that utilize a screen upon
11 which votes may be recorded by means of a stylus or by means of
12 touch shall:

13 (A) Be constructed to provide for the direct electronic
14 recording and tabulating of votes cast in a system specifically
15 designed and engineered for the election application;

16 (B) Be constructed to prevent any voter from voting for more
17 than the allowable number of candidates for any office, to include
18 an audible or visual signal, or both, warning any voter who
19 attempts to vote for more than the allowable number of candidates
20 for any office or who attempts to cast his or her ballot prior to
21 its completion and are constructed to include a visual or audible
22 confirmation, or both, to the voter upon completion and casting of
23 the ballot;

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

1 in a series of sequential pages, and to ensure that the voter sees
2 all of the ballot options on all pages before completing his or her
3 vote and to allow the voter to review and change all ballot choices
4 prior to completing and casting his or her ballot;

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

9 (E) Be constructed to allow election commissioners, poll
10 clerks, or both, to designate, mark or otherwise record provisional
11 ballots;

12 (F) Consist of devices which are independent, nonnetworked
13 voting systems in which each vote is recorded and retained within
14 each device's internal nonvolatile electronic memory and contain an
15 internal security, the absence of which prevents substitution of
16 any other device;

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

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

24 (I) Be constructed to record all preelection, election and

1 post-election activities, including all ballot images and system
2 anomalies, in each device's internal electronic memory and are to
3 be accessible in electronic or printed form;

4 (J) Be constructed with a battery backup system in each device
5 to, at a minimum, prevent the loss of any votes, as well as all
6 preelection, election and post-election activities, including all
7 ballot images and system anomalies, stored in the device's internal
8 electronic memory and to allow voting to continue for two hours of
9 uninterrupted operation in case of an electrical power failure; and

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

15 **§3-4A-9a. Authorization for ballot-marking voting systems; minimum**
16 **requirements.**

17 (a) For purposes of this section, "ballot-marking accessible
18 voting system" means a device which allows voters, including voters
19 with disabilities, to mark an optical scanning or mark-sensing
20 voting system ballot, privately and independently. The
21 ballot-marking device is capable of marking voter selections on an
22 optically readable or mark-sensing ballot which shall be
23 subsequently read and tallied on state certified optically readable
24 or mark-sensing ballot tabulating and reporting systems. Counties

1 are hereby permitted to obtain and employ ballot-marking accessible
2 voting systems that are approved by the State Election Commission.

3 (b) The ballot-marking accessible voting device shall be a
4 completely integrated ballot-marking device that is designed to
5 allow voters to either view ballot choices through a high
6 resolution visual display or listen to ballot choices with
7 headphones and then enter ballot selections directly through
8 specially designed, integrated accessibility ~~keys~~ devices.

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

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

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

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

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

1 issue;

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

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

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

9 (F) Allow blind or visually impaired voters to vote in
10 complete privacy;

11 (G) Provide voters with an opportunity to change ballot
12 selections, or correct errors, before the ballot is marked for
13 voting, including the opportunity to correct the error through the
14 issuance of a replacement ballot if the voter was otherwise unable
15 to change the ballot or correct the error;

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

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

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

24 (K) Include the ability for a voter to employ a sip/puff

1 device to enter ballot choices;

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

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

9 (N) Have multiple-language capability; and

10 (O) Allow the voter to verify that:

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

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

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

21 **§3-4A-9b. Authorization for precinct ballot-scanning device;**
22 **minimum requirements.**

23 (a) For purposes of this section, "precinct ballot-scanning
24 device" means a device used by the voter at the precinct on

1 election day or during early voting for the purpose of scanning the
2 voter's ballot after the ballot has been voted but prior to
3 depositing the ballot into the ballot box.

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

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

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

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

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

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

1 (e) The precinct ballot-scanning device may be used for
2 tabulating election results only under the following conditions:

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

5 (2) No ~~print out or~~ tabulation of results is done at the
6 precinct;

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

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

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

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

1 **§3-4A-10. County clerk to be custodian of vote-recording devices,**
2 **tabulating equipment and electronic poll books;**
3 **duties.**

4 (a) When an electronic voting system is acquired by any county
5 commission, the vote-recording devices, where applicable, and the
6 tabulating equipment shall be immediately placed in the custody of
7 the county clerk and shall remain in his or her custody at all
8 times except when in use at an election or when in custody of a
9 court or court officers during contest proceedings. The clerk
10 shall see that the vote-recording devices and the tabulating
11 equipment are properly protected and preserved from damage or
12 unnecessary deterioration and shall not permit any unauthorized
13 person to tamper with them. The clerk shall also keep the
14 vote-recording devices and tabulating equipment in repair and ~~of~~
15 ~~preparing~~ prepare the same for voting.

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

1 electronic poll books. The clerk shall also keep the electronic
2 poll books in good repair and the clerk shall prepare the
3 electronic poll books for election day.

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

5 Where vote recording devices are used, the county commission
6 of each county shall, upon the close of registration, review the
7 total number of active registered voters and the number of
8 registered voters of each party in each precinct. Prior to each
9 election, the commission shall determine the number of voting
10 devices needed to accommodate voters without long delays and shall
11 assign an appropriate number to each precinct. For the purposes of
12 the primary election, the commission shall assign the number of
13 vote recording devices in each precinct to be prepared for each
14 party based as nearly as practicable on the proportion of
15 registered voters of each party to the total: *Provided*, That a
16 minimum of ~~one vote recording device per party be provided, except~~
17 ~~for "independent" voters, which shall be determined under section~~
18 ~~twenty of this article~~ two vote recording devices be provided.

19 **§3-4A-13. Inspection of ballots, electronic poll books and**
20 **vote-recording devices; duties of county commission,**
21 **ballot commissioners and election commissioners;**
22 **records relating to ballots and vote-recording**
23 **devices; receipt of election materials by ballot**
24 **commissioners.**

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

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

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

1 clerk entered the numbers of the devices opposite the numbers of
2 the precincts.

3 (d) The vote-recording devices, the electronic poll books and
4 the ballots shall then be secured in double lock rooms. The clerk
5 and the president or president pro tempore of the county commission
6 shall each have a key. The rooms shall be unlocked only in their
7 presence and only for the removal of the devices, electronic poll
8 books and the ballots for transportation to the polls. Upon
9 removal of the devices, the electronic poll books and the ballots,
10 the clerk and president or president pro tempore of the county
11 commission shall certify in writing signed by them that the
12 devices, the electronic poll books and packages of ballots were
13 found to be sealed when removed for transportation to the polls.

14 (e) Vote-recording devices used during the early voting period
15 may be used on election day if retested in accordance with all the
16 provisions of this section, including public notice between the
17 close of early voting and prior to precinct placement for election
18 day. ~~Vote-recording devices containing a personal electronic~~
19 ~~ballot (PEB), a programable memory chip and a printed paper trail~~
20 must comply with the applicable requirements of section twenty-six
21 of this article.

22 (f) Not later than one day before the election, the election
23 commissioner of each precinct previously designated by the ballot
24 commissioners shall attend at the office of the clerk of the county

1 commission to receive the necessary election records, books and
2 supplies required by law. The election commissioners shall receive
3 the per diem mileage rate prescribed by law for this service. The
4 election commissioners shall give the ballot commissioners a
5 sequentially numbered written receipt, on a printed form, provided
6 by the clerk of the county commission, for such records, books and
7 supplies. The receipt shall be prepared in duplicate. One copy of
8 the receipt shall remain with the clerk of the county commission
9 and one copy shall be delivered to the president or president pro
10 tempore of the county commission.

11 **§3-4A-17. Check of vote-recording devices and electronic poll**
12 **books before use; corrections; reserve vote-recording**
13 **devices.**

14 ~~(a) In counties utilizing an electronic voting system where~~
15 ~~votes are to be recorded by means of perforating or by touching a~~
16 ~~screen with a stylus or by means of touch before permitting the~~
17 ~~first voter to vote, the election commissioners shall examine the~~
18 ~~vote-recording devices to ascertain whether the ballot labels are~~
19 ~~arranged as specified on the facsimile diagram furnished to the~~
20 ~~precinct. If the ballot labels are arranged incorrectly, the~~
21 ~~commissioners shall immediately notify the clerk of the county~~
22 ~~commission of the foregoing facts in writing, indicating the number~~
23 ~~of the device, and obtain from the clerk a reserve vote-recording~~
24 ~~device and thereafter proceed to conduct the election.~~

1 ~~(b)~~ (a) Any reserve vote-recording device so used is to be
2 prepared for use by the clerk or his or her duly appointed deputy
3 and the reserve vote-recording device is to be prepared, inspected
4 and sealed and delivered to the polling place wherein the seal is
5 to be broken and the device opened in the presence of the precinct
6 election commissioners who shall certify in writing signed by them
7 to the clerk of the county commission, that the reserve
8 vote-recording device was found to be sealed upon delivery to the
9 polling place, that the seal was broken and the device opened in
10 their presence at the polling place. ~~The vote-recording device~~
11 ~~found to have been with incorrect ballot labels is to be returned~~
12 ~~immediately to the custody of the clerk who shall then promptly~~
13 ~~cause the vote-recording device to be repaired, prepared and~~
14 ~~resealed in order that it may be used as a reserve vote-recording~~
15 ~~device if needed.~~

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

1 **§3-4A-19. Conducting electronic voting system elections**
2 **generally; duties of election officers; penalties.**

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

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

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

21 (d) One hour before the opening of the polls the precinct
22 election commissioners shall arrive at the polling place and set up
23 the voting booths in clear view of the election commissioners.
24 Where applicable, they shall open the vote-recording devices, place

1 them in the voting booths, examine them to see that they have the
2 correct ballots ~~or ballot labels, where applicable~~ by comparing
3 them with the sample ballots, and determine whether they are in
4 proper working order. They shall open and check the ballots, the
5 electronic poll books, if applicable, supplies, records and forms
6 and post the sample ballots ~~or ballot labels~~ and instructions to
7 voters. Upon ascertaining that all ballots, supplies, electronic
8 poll books, if applicable, records and forms arrived intact, the
9 election commissioners shall certify their findings in writing upon
10 forms provided and collected by the clerk of the county commission
11 over their signatures to the clerk of the county commission. Any
12 discrepancies are to be noted and reported immediately to the clerk
13 of the county commission. The election commissioners shall then
14 number in sequential order the ballot stub of each ballot in their
15 possession and report in writing to the clerk of the county
16 commission the number of ballots received. They shall issue the
17 ballots in sequential order to each voter.

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

24 (f) Where applicable, each voter shall be instructed how to

1 operate the vote-recording device before he or she enters the
2 voting booth.

3 (g) Where applicable, any voter who spoils, defaces or
4 mutilates the ballot delivered to him or her, on returning the
5 ballot to the poll clerks, shall receive another in its place.
6 Every person who does not vote any ballot delivered to him or her
7 shall, before leaving the election room, return the ballot to the
8 poll clerks. When a spoiled or defaced ballot is returned, the
9 poll clerks shall make a minute of the fact on the poll books, at
10 the time, write the word "spoiled" across the face of the ballot
11 and place it in an envelope for spoiled ballots.

12 Immediately on closing the polls, the election commissioners
13 shall ascertain the number of spoiled ballots during the election
14 and the number of ballots remaining not voted. The election
15 commissioners shall also ascertain from the poll books the number
16 of persons who voted and shall report, in writing signed by them to
17 the clerk of the county commission, any irregularities in the
18 ballot boxes, the number of ballots cast, the number of ballots
19 spoiled during the election and the number of ballots unused. All
20 unused ballots are to be returned at the same time to the clerk of
21 the county commission who shall count them and record the number.
22 All unused ballots shall be stored with the other election
23 materials and destroyed at the expiration of twenty-two months.

24 (h) Each commissioner who is a member of an election board

1 which fails to account for every ballot delivered to it is guilty
2 of a misdemeanor and, upon conviction thereof, shall be fined not
3 more than \$1,000 or confined in jail for not more than one year, or
4 both.

5 (i) The board of ballot commissioners of each county, or the
6 chair of the board, shall preserve the ballots that are left over
7 in their hands, after supplying the precincts as provided, until
8 the close of the polls on the day of election and shall deliver
9 them to the clerk of the county commission who shall store them
10 with the other election materials and destroy them at the
11 expiration of twenty-two months.

12 (j) Where ballots are used, the voter, after he or she has
13 marked his or her ballot, shall, before leaving the voting booth,
14 place the ballot inside the envelope or sleeve provided for this
15 purpose, with the stub extending outside the envelope, and return
16 it to an election commissioner who shall remove the stub and
17 deposit the envelope, if applicable, with the ballot inside in the
18 ballot box. No ballot from which the stub has been detached may be
19 accepted by the officer in charge of the ballot box, but the ballot
20 shall be marked "spoiled" and placed with the spoiled ballots. If
21 an electronic voting system is used that utilizes a screen on which
22 votes may be recorded by means of a stylus or by means of touch and
23 the signal warning that a voter has attempted to cast his or her
24 ballot has failed to do so properly has been activated and the

1 voter has departed the polling place and cannot be recalled by a
2 poll clerk to complete his or her ballot while the voter remains
3 physically present in the polling place, then two election
4 commissioners of different registered party affiliations, two poll
5 clerks of different registered party affiliations or an election
6 commissioner and a poll clerk of different registered party
7 affiliations shall spoil the ballot.

8 (k) The precinct election commissioners shall prepare a report
9 in quadruplicate of the number of voters who have voted and, where
10 electronic voting systems are used that utilize a screen on which
11 votes may be recorded by means of a stylus or by means of touch,
12 the number of ballots that were spoiled, as indicated by the poll
13 books, and shall place two copies of this report in the ballot box
14 or where electronic voting systems are used that utilize a screen
15 upon which votes may be recorded by means of a stylus or by means
16 of touch, shall place two copies of this report and the electronic
17 ballot devices in a container provided by the clerk of the county
18 commission, which thereupon is to be sealed with a paper seal
19 signed by the election commissioners to ensure that no additional
20 ballots may be deposited or removed from the ballot box. Two
21 election commissioners of different registered party affiliations
22 or two special messengers of different registered party
23 affiliations appointed by the clerk of the county commission, shall
24 forthwith deliver the ballot box or container to the clerk of the

1 county commission at the central counting center and receive a
2 signed numbered receipt therefor. The receipt must carefully set
3 forth in detail any and all irregularities pertaining to the ballot
4 boxes or containers and noted by the precinct election officers.

5 The receipt is to be prepared in duplicate, a copy of which
6 remains with the clerk of the county commission who shall have any
7 and all irregularities noted. The time of their departure from the
8 polling place is to be noted on the two remaining copies of the
9 report, which are to be immediately mailed to the clerk of the
10 county commission.

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

15 **§3-4A-20. "Independent" voting in primary elections.**

16 If at any primary elections, nonpartisan candidates for office
17 and public questions are submitted to the voters on which persons
18 registered as "independent" are entitled to vote, as provided in
19 section ~~eighteen~~ thirty-one, article two of this chapter, the
20 election officers shall provide a vote recording device, where
21 applicable, or the appropriate ballot to be marked by an
22 electronically sensible pen or ink, or by means of a stylus or by
23 means of touch or by other electronic means, so that "independent"
24 voters may vote only those portions of the ballot relating to the

1 nonpartisan candidates and the public questions submitted, or shall
2 provide a ballot containing only provisions for voting for those
3 candidates and upon those issues submitted common to the ballots
4 provided to all voters regardless of political party affiliation,
5 or both: Provided, That "independent" or "unaffiliated" voters may
6 vote in partisan primary elections as provided in section
7 thirty-one, article two of this chapter.

8 ~~In counties utilizing electronic voting systems in which votes~~
9 ~~are recorded by perforating, if vote recording devices are not~~
10 ~~available for the "independent" voters, provisions are to be made~~
11 ~~for sealing the partisan section or sections of the ballot or~~
12 ~~ballot labels on a vote recording device using temporary seals,~~
13 ~~thus permitting the independent voter to vote for the nonpartisan~~
14 ~~section or sections of the ballot or ballot labels. After the~~
15 ~~"independent" voter has voted, the temporary seals may be removed~~
16 ~~and the device may then be used by partisan voters.~~

17 **§3-4A-27. Proceedings at the central counting center.**

18 (a) All proceedings at the central counting center are to be
19 under the supervision of the clerk of the county commission and are
20 to be conducted under circumstances which allow observation from a
21 designated area by all persons entitled to be present. The
22 proceedings shall take place in a room of sufficient size and
23 satisfactory arrangement to permit observation. Those persons
24 entitled to be present include all candidates whose names appear on

1 the ballots being counted or if a candidate is absent, a
2 representative of the candidate who presents a written
3 authorization signed by the candidate for the purpose and two
4 representatives of each political party on the ballot who are
5 chosen by the county executive committee chairperson. A reasonable
6 number of the general public is also freely admitted to the room.
7 In the event all members of the general public desiring admission
8 to the room cannot be admitted at one time, the county commission
9 shall provide for a periodic and convenient rotation of admission
10 to the room for observation, to the end that each member of the
11 general public desiring admission, during the proceedings at the
12 central counting center, is to be granted admission for reasonable
13 periods of time for observation: *Provided*, That no person except
14 those authorized for the purpose may touch any ballot or ballot
15 card or other official records and papers utilized in the election
16 during observation.

17 (b) All persons who are engaged in processing and counting the
18 ballots are to work in teams consisting of two persons of opposite
19 political parties, and are to be deputized in writing and take an
20 oath that they will faithfully perform their assigned duties.
21 These deputies are to be issued an official badge or identification
22 card which is assigned an identity control number and the deputies
23 are to prominently wear on his or her outer garments the issued
24 badge or identification card. Upon completion of the deputies'

1 duties, the badges or identification cards are to be returned to
2 the county clerk.

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

6 ~~(1) In systems using punch card ballots, the ballot cards and~~
7 ~~secrecy envelopes for a precinct are to be removed from the box and~~
8 ~~examined for write-in votes before being separated and stacked for~~
9 ~~delivery to the tabulator. Immediately after valid write-in votes~~
10 ~~are tallied, the ballot cards are to be delivered to the tabulator.~~
11 ~~No write-in vote may be counted for an office unless the voter has~~
12 ~~entered the name of that office and the name of an official~~
13 ~~write-in candidate for that office on the inside of the secrecy~~
14 ~~envelope, either by writing, affixing a sticker or label or placing~~
15 ~~an ink-stamped impression thereon;~~

16 ~~(2)~~ (1) In systems using ballots marked with electronically
17 sensible ink, ballots are to be removed from the boxes and stacked
18 for the tabulator which separates ballots containing marks for a
19 write-in position. Immediately after tabulation, the valid
20 write-in votes are to be tallied. No write-in vote may be counted
21 for an office unless the voter has entered the name of an official
22 write-in candidate for that office on the line provided, either by
23 writing, affixing a sticker or placing an ink-stamped impression
24 thereon;

1 ~~(3)~~ (2) In systems using ballots in which votes are recorded
2 upon screens with a stylus or by means of touch, the personalized
3 electronic ballots are to be removed from the containers and
4 stacked for the tabulator. Systems using ballots in which votes
5 are recorded upon screens with a stylus or by means of touch are to
6 tally write-in ballots simultaneously with the other ballots;

7 ~~(4)~~ (3) When more than one person is to be elected to an
8 office and the voter desires to cast write-in votes for more than
9 one official write-in candidate for that office, a single punch or
10 mark, as appropriate for the voting system, in the write-in
11 location for that office is sufficient for all write-in choices.
12 When there are multiple write-in votes for the same office and the
13 combination of choices for candidates on the ballot and write-in
14 choices for the same office exceed the number of candidates to be
15 elected, the ballot is to be duplicated or hand counted, with all
16 votes for that office rejected;

17 ~~(5)~~ (4) Write-in votes for nomination for any office and
18 write-in votes for any person other than an official write-in
19 candidate are to be disregarded;

20 ~~(6)~~ (5) When a voter casts a straight ticket vote and also
21 ~~punches or~~ marks the location for a write-in vote for an office,
22 the straight ticket vote for that office is to be rejected, whether
23 or not a vote can be counted for a write-in candidate; and

24 ~~(7)~~ (6) Official write-in candidates are those who have filed

1 a write-in candidate's certificate of announcement and have been
2 certified according to the provisions of section four-a, article
3 six of this chapter.

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

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

22 (f) If for any reason it becomes impracticable to count all or
23 a part of the ballots with tabulating equipment, the county
24 commission may direct that they be counted manually, following as

1 far as practicable the provisions governing the counting of paper
2 ballots.

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

NOTE: The purpose of this bill is to implement the use of electronic voting systems and set forth the requirements of those systems. The bill provides that if five percent of the registered voters in a county sign a petition not to use electronic voting for that county, the issue will be put on the ballot for that county. The bill provides that if an electronic voting system is terminated, the one replacing it must comply with the federal Help America Vote Act of 2002. The bill deletes the requirement that the purchase or lease of vote recording devices must be paid in cash. The bill also deletes outmoded terms and voting systems no longer being used.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.