

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 495**

(SENATORS PALUMBO AND PLYMALE, *original sponsors*)

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

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

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

That §3-4A-13a of the Code of West Virginia, 1931, as amended, be repealed; and that §3-4A-2, §3-4A-3, §3-4A-4, §3-4A-6, §3-4A-9, §3-4A-9a, §3-4A-9b, §3-4A-10, §3-4A-10a, §3-4A-13, §3-4A-17, §3-4A-19, §3-4A-20 and §3-4A-27 of said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

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

**§3-4A-2. Definitions.**

1 As used in this article, unless otherwise specified:

2 (1) “Automatic tabulating equipment” means all apparatus  
3 necessary to electronically count votes recorded on ballots  
4 and tabulate the results;

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

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

14 (4) “Electronic poll book” means an electronic device  
15 containing the same voter registration information main-  
16 tained by the county clerk in a printed poll book.

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

24 (6) “Standard validation test deck” means a group of  
25 ballots wherein all voting possibilities which can occur in an  
26 election are represented; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

69 (N) Have multiple-language capability; and

70 (O) Allow the voter to verify that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.....  
*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*

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The within ..... this the .....  
Day of ....., 2011.

.....  
*Governor*