

H. B. 3058

(By Delegates Miley, Ferro and Poore)

(By request of the Secretary of State)

[Introduced February 8, 2011; referred to the Committee on the Judiciary then Finance.]

10 A BILL to repeal §3-4A-13a of the Code of West Virginia, 1931, as
11 amended; and to amend and reenact §3-4A-2, §3-4A-3, §3-4A-4,
12 §3-4A-6, §3-4A-9, §3-4A-9a, §3-4A-9b, §3-4A-10, §3-4A-10a, §3-
13 4A-13, §3-4A-17, §3-4A-19, §3-4A-20 and §3-4A-27, all relating
14 generally to the use of electronic voting systems; setting
15 forth the requirements of electronic voting systems; providing
16 that if five percent of the registered voters in a county sign
17 a petition not to use electronic voting for that county, the
18 issue will be put on the ballot in that county; providing that
19 if an electronic voting system is terminated, the one
20 replacing it must comply with the federal Help America Vote
21 Act of 2002; deleting the requirement that the purchase or
22 lease of vote recording devices must be paid in cash; and
23 deleting outmoded terms and voting systems no longer being
24 used.

25 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be repealed; and that §3-4A-2, §3-4A-3, §3-4A-4, §3-4A-6, §3-4A-9,

1 §3-4A-9a, §3-4A-9b, §3-4A-10, §3-4A-10a, §3-4A-13, §3-4A-17, §3-4A-
2 19, §3-4A-20 and §3-4A-27 of said code be amended and reenacted,
3 all to read as follows:

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

5 **§3-4A-2. Definitions.**

6 As used in this article, unless otherwise specified:

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

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

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

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

22 (5) "Electronic voting system" is a means of conducting an
23 election whereby votes are recorded on ballots by means of an
24 electronically sensible marking ink, by perforating or are recorded
25 on equipment that registers votes on a computer disk, or by
26 touching a screen with a stylus or by means of touch, and votes are
27 subsequently counted by automatic tabulating equipment at the

1 central counting center;

2 (6) "Program deck" means the actual punch card deck or decks,
3 or a computer program disk, diskette, tape or other programming
4 media, containing the program for counting and tabulating the
5 votes, including the "application program deck";

6 (7) "Application program deck" means the punch card deck or
7 equivalent capacity in other program medias as provided, containing
8 specific options used and necessary to modify the program of
9 general application, to conduct and tabulate a specific election
10 according to applicable law;

11 (8) (6) "Standard validation test deck" means a group of
12 ballots wherein all voting possibilities which can occur in an
13 election are represented; and

14 (9) (7) "Vote-recording device" means equipment in which
15 ballot labels and ballots are placed to allow a voter to record his
16 or her vote by ~~perforating or equipment with electronically~~
17 sensible ink, or pencil, or a screen upon which votes may be
18 recorded by means of a stylus or by means of touch.

19 **S3-4A-3. Procedure for adopting electronic voting systems.**

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

24 By a majority of the members of the county commission voting
25 to adopt the same at a public meeting regularly called for that
26 purpose: Provided, That the meeting be held not less than six
27 months prior to a general election or six months prior to a primary

1 election, with notice thereof published as a Class II-O legal
2 advertisement in compliance with the provisions of article three,
3 chapter fifty-nine of this code. The publication area for such
4 publication shall be the county involved.

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

19 **S3-4A-4. Procedure for terminating use of electronic voting**
20 **systems.**

21 The use of an electronic voting system may be terminated:
22 (1) By a majority of the members of the county commission
23 voting to terminate use of the system and replace it with a
24 different voting system meeting the requirements of the Help
25 America Vote Act of 2002, 42 U.S.C. §15301, et seq. at a special
26 public meeting called for the purpose of said termination, with due
27 notice thereof published as a Class II-O legal advertisement in

1 compliance with the provisions of article three, chapter fifty-nine
2 of this code, and the publication area for such publication shall
3 be the county involved: *Provided*, That such meeting shall be held
4 not less than six months prior to a general election or six months
5 prior to a primary election. If at such meeting, such county
6 commission shall enter an order of its intention to terminate use
7 of an electronic voting system, it shall thereafter forthwith cause
8 to be published a certified copy of such order as a Class II-O
9 legal advertisement in compliance with the provisions of article
10 three, chapter fifty-nine of this code, and the publication area
11 for such publication shall be the county involved. The first
12 publication of such order shall not be less than twenty days after
13 the entry of such order. Such county commission shall not
14 terminate the use of an electronic voting system until ninety days
15 after the entry of such order of its intention to terminate the
16 same. Promptly after the expiration of ninety days after the entry
17 of such order of intention to terminate the use of an electronic
18 voting system, if no petition has theretofore been filed with such
19 county commission requesting a referendum on the question of
20 termination of the electronic voting system as hereinafter
21 provided, such county commission shall enter a final order
22 terminating the use of the electronic voting system, and the use of
23 electronic voting system shall thereby be terminated. If a petition
24 has been submitted as provided in this subdivision, the county
25 commission shall not terminate the use of the system but shall
26 proceed as provided in this subdivision.

27 If five percent or more of the registered voters of such

1 county shall sign a petition requesting that the use of an
2 electronic voting system be terminated in such county and such
3 petition be filed with the county commission of such county within
4 ninety days after the entry of such order of intention to terminate
5 the use of an electronic voting system, such county commission
6 shall submit to the voters of such county at the next general or
7 primary election, whichever shall first occur, the question:
8 "Shall the use of an electronic voting system be terminated in
9 County?" If this question be answered in the
10 affirmative by a majority of the voters in such election upon the
11 question, the use of an electronic voting system shall thereby be
12 terminated. If such question shall not be answered in the
13 affirmative by such majority, the use of an electronic voting
14 system shall continue.

15 (2) By the affirmative vote of a majority of the voters of
16 such county voting upon the question of termination of the use of
17 an electronic voting system in such county. If five percent or
18 more of the registered voters of such county shall sign a petition
19 requesting the termination of the use of an electronic voting
20 system in such county, and such petition be filed with the county
21 commission of such county, such county commission shall submit to
22 the voters of such county at the next general or primary election,
23 following by not less than ninety days the date of the filing of
24 such petition, the question: "Shall the use of an electronic
25 voting system be terminated in County?" If this
26 question be answered in the affirmative by a majority of the voters
27 of such county voting upon the question, the use of an electronic

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

5 **§3-4A-6. Acquisition of vote recording devices by purchase or**
6 **lease; acquisition of use of automatic tabulating**
7 **equipment; counting centers.**

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

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

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

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

21 (c) A county commission may enter into an agreement with
22 another county commission to share automatic tabulating equipment
23 if the automatic tabulating equipment may be transported to the
24 appropriate central counting centers. No ballots may be
25 transported for counting in any county other than the county in
26 which the votes were cast.

27 (d) A county commission is authorized to accept as a gift the

1 use of suitable automatic tabulating equipment.

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

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

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

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

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

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

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

1 ~~ballot labels;~~

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

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

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

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

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

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

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

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

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

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

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

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

25 (E) Once the printed copy of the voter's votes is accepted by
26 the voter as correctly reflecting the voter's intent, but not
27 before, it will automatically be stored for recounts or random

1 checks and the electronic vote will be cast within the computer
2 mechanism of the direct recording electronic voting machine.

3 (F) Direct recording electronic voting machines with a
4 mandatory paper copy shall be approved by the Secretary of State.

5 The Secretary of State may promulgate rules and emergency rules to
6 implement or enforce this subsection pursuant to the provisions of
7 section five, article three, chapter twenty-nine-a of this code.

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

9 (A) Be durably constructed of material of good quality and in
10 a workmanlike manner and in a form which makes it safely
11 transportable;

12 (B) Be constructed with frames for the placing of ballot
13 labels that the labels upon which are printed the names of
14 candidates and their respective parties, titles of offices and
15 wording of questions are reasonably protected from mutilation,
16 disfiguration or disarrangement or are constructed to ensure that
17 the screens upon which appear the names of the candidates and their
18 respective parties, titles of offices and wording of questions are
19 reasonably protected from any modification;

20 (C) Bear a number that will identify it or distinguish it
21 from any other machine;

22 (D) Be constructed to ensure that a voter may easily learn
23 the method of operating it and may expeditiously cast his or her
24 vote for all candidates of his or her choice and upon any public
25 question;

26 (E) Be accompanied by a mechanically or electronically
27 operated instruction model which shows the arrangement of the

1 ballot labels, party columns or rows, and questions;

2 (F) 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, be constructed to provide for the direct electronic
5 recording and tabulating of votes cast in a system specifically
6 designed and engineered for the election application;

7 (G) For electronic voting systems that utilize a screen upon
8 which votes may be recorded by means of a stylus or by means of
9 touch, be constructed to prevent any voter from voting for more
10 than the allowable number of candidates for any office, to include
11 an audible or visual signal, or both, warning any voter who
12 attempts to vote for more than the allowable number of candidates
13 for any office or who attempts to cast his or her ballot prior to
14 its completion and are constructed to include a visual or audible
15 confirmation, or both, to the voter upon completion and casting of
16 the ballot;

17 (H) For electronic voting systems that utilize a screen upon
18 which votes may be recorded by means of a stylus or by means of
19 touch, be constructed to present the entire ballot to the voter, in
20 a series of sequential pages, and to ensure that the voter sees all
21 of the ballot options on all pages before completing his or her
22 vote and to allow the voter to review and change all ballot choices
23 prior to completing and casting his or her ballot;

24 (I) For electronic voting systems that utilize a screen upon
25 which votes may be recorded by means of a stylus or by means of
26 touch, be constructed to allow election commissioners to spoil a
27 ballot where a voter fails to properly cast his or her ballot, has

1 departed the polling place and cannot be recalled by a poll clerk
2 to complete his or her ballot;

3 (J) 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 allow election commissioners, poll clerks,
6 or both, to designate, mark or otherwise record provisional
7 ballots;

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

15 (L) 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, 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 (M) For electronic voting systems that utilize a screen upon
22 which votes may be recorded by means of a stylus or by means of
23 touch, contain a unique, embedded internal serial number for
24 auditing purposes for each device used to activate, retain and
25 record votes;

26 (N) For electronic voting systems that utilize a screen upon
27 which votes may be recorded by means of a stylus or by means of

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

5 (O) For electronic voting systems that utilize a screen upon
6 which votes may be recorded by means of a stylus or by means of
7 touch, be constructed with a battery backup system in each device
8 to, at a minimum, prevent the loss of any votes, as well as all
9 preelection, election and post-election activities, including all
10 ballot images and system anomalies, stored in the device's internal
11 electronic memory and to allow voting to continue for two hours of
12 uninterrupted operation in case of an electrical power failure; and

13 (P) 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 prevent the loss of any votes, as well as
16 all preelection, election and post-election activities, including
17 all ballot images and system anomalies, stored in each device's
18 internal electronic memory even in case of an electrical and
19 battery power failure.

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

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

26 (B) Be constructed to prevent any voter from voting for more
27 than the allowable number of candidates for any office, to include

1 an audible or visual signal, or both, warning any voter who
2 attempts to vote for more than the allowable number of candidates
3 for any office or who attempts to cast his or her ballot prior to
4 its completion and are constructed to include a visual or audible
5 confirmation, or both, to the voter upon completion and casting of
6 the ballot;

7 (C) Be constructed to present the entire ballot to the voter,
8 in a series of sequential pages, and to ensure that the voter sees
9 all of the ballot options on all pages before completing his or her
10 vote and to allow the voter to review and change all ballot choices
11 prior to completing and casting his or her ballot;

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

16 (E) Be constructed to allow election commissioners, poll
17 clerks, or both, to designate, mark or otherwise record provisional
18 ballots;

19 (F) Consist of devices which are independent, nonnetworked
20 voting systems in which each vote is recorded and retained within
21 each device's internal nonvolatile electronic memory and contain an
22 internal security, the absence of which prevents substitution of
23 any other device;

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

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

4 (I) Be constructed to record all preelection, election and
5 post-election activities, including all ballot images and system
6 anomalies, in each device's internal electronic memory and are to
7 be accessible in electronic or printed form;

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

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

19 **§3-4A-9a. Authorization for ballot-marking voting systems; minimum**
20 **requirements.**

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

1 or mark-sensing ballot tabulating and reporting systems. Counties
2 are hereby permitted to obtain and employ ballot-marking accessible
3 voting systems that are approved by the state Election Commission.

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

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

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

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

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

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

27 (C) Allow the voter to independently review all ballot choices

1 and make any corrections, before the ballot is marked;

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

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

7 (F) Allow blind or visually impaired voters to vote in
8 complete privacy;

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

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

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

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

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

24 (L) Allow the voter to magnify all ballot choices and to
25 adjust both the volume of the audio feature and the speed of ballot
26 presentation;

27 (M) Allow the voter to employ his or her own headset as well

1 as the headset provided with the ballot-marking device while being
2 equipped with multiple output connections to accommodate different
3 headsets;

4 (N) Have multiple-language capability; and

5 (O) Allow the voter to verify that:

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

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

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

16 **§3-4A-9b. Authorization for precinct ballot-scanning device;
17 minimum requirements.**

18 (a) For purposes of this section, "precinct ballot-scanning
19 device" means a device used by the voter at the precinct on
20 election day or during early voting for the purpose of scanning the
21 voter's ballot after the ballot has been voted but prior to
22 depositing the ballot into the ballot box.

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

26 (c) The precinct ballot-scanning device, firmware and
27 programming software must be certified by an independent testing

1 authority, according to current federal standards and be approved
2 by the state Election Commission. No election official may enter
3 into any contract to purchase, rent, lease or otherwise acquire any
4 precinct ballot-scanning device, firmware or software not approved
5 by the State Election Commission.

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

7 (1) Alert the voter if the voter has made more ballot
8 selections than the law allows for an individual office or ballot
9 issue;

10 (2) Alert the voter if the voter has made fewer ballot
11 selections than the law allows for an individual office or ballot
12 issue; and

13 (3) Allow voters an opportunity to change ballot selections,
14 or correct errors, including the opportunity to correct the error
15 through the issuance of a replacement ballot if the voter was
16 otherwise unable to change the ballot or correct the error.

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

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

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

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

27 (4) All voters at the precinct are required to use the ballot

1 scanning device as a condition of completing their vote.

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

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

14 §3-4A-10. County clerk to be custodian of vote-recording devices,
15 tabulating equipment and electronic poll books;
16 duties.

17 (a) When an electronic voting system is acquired by any county
18 commission, the vote-recording devices, where applicable, and the
19 tabulating equipment shall be immediately placed in the custody of
20 the county clerk and shall remain in his or her custody at all
21 times except when in use at an election or when in custody of a
22 court or court officers during contest proceedings. The clerk
23 shall see that the vote-recording devices and the tabulating
24 equipment are properly protected and preserved from damage or
25 unnecessary deterioration and shall not permit any unauthorized
26 person to tamper with them. The clerk shall also keep the vote-
27 recording devices and tabulating equipment in repair and of

1 preparing prepare the same for voting.

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

14 **§3-4A-10a. Proportional distribution of vote recording devices.**

15 Where vote recording devices are used, the county commission
16 of each county shall, upon the close of registration, review the
17 total number of active registered voters and the number of
18 registered voters of each party in each precinct. Prior to each
19 election, the commission shall determine the number of voting
20 devices needed to accommodate voters without long delays and shall
21 assign an appropriate number to each precinct. For the purposes of
22 the primary election, the commission shall assign the number of
23 vote recording devices in each precinct to be prepared for each
24 party based as nearly as practicable on the proportion of
25 registered voters of each party to the total: *Provided*, That a
26 minimum of ~~one vote recording device per party be provided, except~~
27 ~~for "independent" voters, which shall be determined under section~~

1 ~~twenty of this article~~ two vote recording devices be provided.

2 **§3-4A-13. Inspection of ballots, electronic poll books and vote-**
3 **recording devices; duties of county commission,**
4 **ballot commissioners and election commissioners;**
5 **records relating to ballots and vote-recording**
6 **devices; receipt of election materials by ballot**
7 **commissioners.**

8 When the clerk of the county commission has completed the
9 preparation of the ballots and of any electronic poll books and
10 vote-recording devices as provided in sections eleven-a and twelve-
11 a of this article and as provided in section twenty-one, article
12 one of this chapter, and not later than seven days before the day
13 of the election, he or she shall notify the members of the county
14 commission and the ballot commissioners that the ballots and any
15 electronic poll books and devices are ready for use.

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

27 (c) Any candidate and one representative of each political

1 party on the ballot may be present during the examination. If the
2 devices and electronic poll books and ballots are found to be in
3 proper order, the members of the county commission and the ballot
4 commissioners shall endorse their approval in the book in which the
5 clerk entered the numbers of the devices opposite the numbers of
6 the precincts.

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

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

26 (f) Not later than one day before the election, the election
27 commissioner of each precinct previously designated by the ballot

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

12 **S3-4A-17. Check of vote-recording devices and electronic poll
13 books before use; corrections; reserve vote-recording
14 devices.**

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

26 (b) (a) Any reserve vote-recording device so used is to be
27 prepared for use by the clerk or his or her duly appointed deputy

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

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

23 §3-4A-19. Conducting electronic voting system elections
24 generally; duties of election officers; penalties.

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

1 more than five minutes.

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

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

16 (d) One hour before the opening of the polls the precinct
17 election commissioners shall arrive at the polling place and set up
18 the voting booths in clear view of the election commissioners.
19 Where applicable, they shall open the vote-recording devices, place
20 them in the voting booths, examine them to see that they have the
21 correct ballots ~~or ballot labels~~, ~~where applicable~~ by comparing
22 them with the sample ballots, and determine whether they are in
23 proper working order. They shall open and check the ballots, the
24 electronic poll books, if applicable, supplies, records and forms
25 and post the sample ballots ~~or ballot labels~~ and instructions to
26 voters. Upon ascertaining that all ballots, supplies, electronic
27 poll books, if applicable, records and forms arrived intact, the

1 election commissioners shall certify their findings in writing upon
2 forms provided and collected by the clerk of the county commission
3 over their signatures to the clerk of the county commission. Any
4 discrepancies are to be noted and reported immediately to the clerk
5 of the county commission. The election commissioners shall then
6 number in sequential order the ballot stub of each ballot in their
7 possession and report in writing to the clerk of the county
8 commission the number of ballots received. They shall issue the
9 ballots in sequential order to each voter.

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

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

19 (g) Where applicable, any voter who spoils, defaces or
20 mutilates the ballot delivered to him or her, on returning the
21 ballot to the poll clerks, shall receive another in its place.
22 Every person who does not vote any ballot delivered to him or her
23 shall, before leaving the election room, return the ballot to the
24 poll clerks. When a spoiled or defaced ballot is returned, the
25 poll clerks shall make a minute of the fact on the poll books, at
26 the time, write the word "spoiled" across the face of the ballot
27 and place it in an envelope for spoiled ballots.

1 Immediately on closing the polls, the election commissioners
2 shall ascertain the number of spoiled ballots during the election
3 and the number of ballots remaining not voted. The election
4 commissioners shall also ascertain from the poll books the number
5 of persons who voted and shall report, in writing signed by them to
6 the clerk of the county commission, any irregularities in the
7 ballot boxes, the number of ballots cast, the number of ballots
8 spoiled during the election and the number of ballots unused. All
9 unused ballots are to be returned at the same time to the clerk of
10 the county commission who shall count them and record the number.
11 All unused ballots shall be stored with the other election
12 materials and destroyed at the expiration of twenty-two months.

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

18 (i) The board of ballot commissioners of each county, or the
19 chair of the board, shall preserve the ballots that are left over
20 in their hands, after supplying the precincts as provided, until
21 the close of the polls on the day of election and shall deliver
22 them to the clerk of the county commission who shall store them
23 with the other election materials and destroy them at the
24 expiration of twenty-two months.

25 (j) Where ballots are used, the voter, after he or she has
26 marked his or her ballot, shall, before leaving the voting booth,
27 place the ballot inside the envelope or sleeve provided for this

1 purpose, with the stub extending outside the envelope, and return
2 it to an election commissioner who shall remove the stub and
3 deposit the envelope, if applicable, with the ballot inside in the
4 ballot box. No ballot from which the stub has been detached may be
5 accepted by the officer in charge of the ballot box, but the ballot
6 shall be marked "spoiled" and placed with the spoiled ballots. If
7 an electronic voting system is used that utilizes a screen on which
8 votes may be recorded by means of a stylus or by means of touch and
9 the signal warning that a voter has attempted to cast his or her
10 ballot has failed to do so properly has been activated and the
11 voter has departed the polling place and cannot be recalled by a
12 poll clerk to complete his or her ballot while the voter remains
13 physically present in the polling place, then two election
14 commissioners of different registered party affiliations, two poll
15 clerks of different registered party affiliations or an election
16 commissioner and a poll clerk of different registered party
17 affiliations shall spoil the ballot.

18 (k) The precinct election commissioners shall prepare a report
19 in quadruplicate of the number of voters who have voted and, where
20 electronic voting systems are used that utilize a screen on which
21 votes may be recorded by means of a stylus or by means of touch,
22 the number of ballots that were spoiled, as indicated by the poll
23 books, and shall place two copies of this report in the ballot box
24 or where electronic voting systems are used that utilize a screen
25 upon which votes may be recorded by means of a stylus or by means
26 of touch, shall place two copies of this report and the electronic
27 ballot devices in a container provided by the clerk of the county

1 commission, which thereupon is to be sealed with a paper seal
2 signed by the election commissioners to ensure that no additional
3 ballots may be deposited or removed from the ballot box. Two
4 election commissioners of different registered party affiliations
5 or two special messengers of different registered party
6 affiliations appointed by the clerk of the county commission, shall
7 forthwith deliver the ballot box or container to the clerk of the
8 county commission at the central counting center and receive a
9 signed numbered receipt therefor. The receipt must carefully set
10 forth in detail any and all irregularities pertaining to the ballot
11 boxes or containers and noted by the precinct election officers.

12 The receipt is to be prepared in duplicate, a copy of which
13 remains with the clerk of the county commission who shall have any
14 and all irregularities noted. The time of their departure from the
15 polling place is to be noted on the two remaining copies of the
16 report, which are to be immediately mailed to the clerk of the
17 county commission.

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

22 **§3-4A-20. "Independent" voting in primary elections.**

23 If at any primary elections, nonpartisan candidates for office
24 and public questions are submitted to the voters on which persons
25 registered as "independent" are entitled to vote, as provided in
26 section ~~eighteen~~ thirty-one, article two of this chapter, the
27 election officers shall provide a vote recording device, where

1 applicable, or the appropriate ballot to be marked by an
2 electronically sensible pen or ink, or by means of a stylus or by
3 means of touch or by other electronic means, so that "independent"
4 voters may vote only those portions of the ballot relating to the
5 nonpartisan candidates and the public questions submitted, or shall
6 provide a ballot containing only provisions for voting for those
7 candidates and upon those issues submitted common to the ballots
8 provided to all voters regardless of political party affiliation,
9 or both: Provided, That "independent" or "unaffiliated" voters may
10 vote in partisan primary elections as provided in section thirty-
11 one, article two of this chapter.

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

21 **§3-4A-27. Proceedings at the central counting center.**

22 (a) All proceedings at the central counting center are to be
23 under the supervision of the clerk of the county commission and are
24 to be conducted under circumstances which allow observation from a
25 designated area by all persons entitled to be present. The
26 proceedings shall take place in a room of sufficient size and
27 satisfactory arrangement to permit observation. Those persons

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

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

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

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

14 (2) (1) In systems using ballots marked with electronically
15 sensible ink, ballots are to be removed from the boxes and stacked
16 for the tabulator which separates ballots containing marks for a
17 write-in position. Immediately after tabulation, the valid write-
18 in votes are to be tallied. No write-in vote may be counted for an
19 office unless the voter has entered the name of an official write-
20 in candidate for that office on the line provided, either by
21 writing, affixing a sticker or placing an ink-stamped impression
22 thereon;

23 (3) (2) In systems using ballots in which votes are recorded
24 upon screens with a stylus or by means of touch, the personalized
25 electronic ballots are to be removed from the containers and
26 stacked for the tabulator. Systems using ballots in which votes
27 are recorded upon screens with a stylus or by means of touch are to

1 tally write-in ballots simultaneously with the other ballots;

2 (4) (3) When more than one person is to be elected to an
3 office and the voter desires to cast write-in votes for more than
4 one official write-in candidate for that office, a single punch or
5 mark, as appropriate for the voting system, in the write-in
6 location for that office is sufficient for all write-in choices.

7 When there are multiple write-in votes for the same office and the
8 combination of choices for candidates on the ballot and write-in
9 choices for the same office exceed the number of candidates to be
10 elected, the ballot is to be duplicated or hand counted, with all
11 votes for that office rejected;

12 (5) (4) Write-in votes for nomination for any office and
13 write-in votes for any person other than an official write-in
14 candidate are to be disregarded;

15 (6) (5) When a voter casts a straight ticket vote and also
16 ~~punches or~~ marks the location for a write-in vote for an office,
17 the straight ticket vote for that office is to be rejected, whether
18 or not a vote can be counted for a write-in candidate; and

19 (7) (6) Official write-in candidates are those who have filed
20 a write-in candidate's certificate of announcement and have been
21 certified according to the provisions of section four-a, article
22 six of this chapter.

23 (d) If any ballot card is damaged or defective so that it
24 cannot properly be counted by the automatic tabulating equipment,
25 a true duplicate copy is to be made of the damaged ballot card in
26 the presence of representatives of each political party on the
27 ballot and substituted for the damaged ballot card. All duplicate

1 ballot cards are to be clearly labeled "duplicate" and are to bear
2 a serial number which is recorded on the damaged or defective
3 ballot card and on the replacement ballot card.

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

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

19 (g) As soon as possible after the completion of the count, the
20 clerk of the county commission shall have the vote recording
21 devices properly boxed or securely covered and removed to a proper
22 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.