

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 495

(By Senators Palumbo and Plymale)

[Originating in the Committee on the Judiciary;
reported February 22, 2011.]

A BILL to repeal §3-4A-13a of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-4A-2, §3-4A-3, §3-4A-4, §3-4A-6, §3-4A-9, §3-4A-9a, §3-4A-9b, §3-4A-10, §3-4A-10a, §3-4A-13, §3-4A-17, §3-4A-19, §3-4A-20 and §3-4A-27, all relating generally to the use of electronic voting systems; 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 require-

ment 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That §3-4A-13a of the Code of West Virginia, 1931, as amended, be repealed; and that §3-4A-2, §3-4A-3, §3-4A-4, §3-4A-6, §3-4A-9, §3-4A-9a, §3-4A-9b, §3-4A-10, §3-4A-10a, §3-4A-13, §3-4A-17, §3-4A-19, §3-4A-20 and §3-4A-27 of said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 ~~a tabulating card~~ an electronic image or
6 paper on which votes may be recorded by means of perforat-
7 ing or marking with electronically sensible ink or pencil or

8 a screen upon which votes may be recorded by means of a
9 stylus or by 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) "Program deck" means the actual punch card deck or~~
25 ~~decks, or a computer program disk, diskette, tape or other~~
26 ~~programming media, containing the program for counting~~
27 ~~and tabulating the votes, including the "application program~~
28 ~~deck";~~

29 ~~(7) “Application program deck” means the punch card~~
30 ~~deck or equivalent capacity in other program medias as~~
31 ~~provided, containing specific options used and necessary to~~
32 ~~modify the program of general application, to conduct and~~
33 ~~tabulate a specific election according to applicable law;~~

34 ~~(8)~~ (6) “Standard validation test deck” means a group of
35 ballots wherein all voting possibilities which can occur in an
36 election are represented; and

37 ~~(9)~~ (7) “Vote-recording device” means equipment in which
38 ~~ballot labels and~~ ballots are placed to allow a voter to record
39 his or her vote by ~~perforating or equipment with~~ electroni-
40 cally sensible ink, or pencil, or a screen upon which votes
41 may be recorded by means of a stylus or by 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 thereof published as a Class II-0
10 legal advertisement in compliance with the provisions of
11 article three, chapter fifty-nine of this code. The publication
12 area 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 ~~in cash~~ from funds available from the maximum general levy
6 or from any other lawful source; and

7 (2) By leasing the same under written contract of lease and
8 paying the rentals ~~in cash~~ from funds available from the
9 maximum 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 in cash from funds available from the maximum
14 general 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 no person, except in
9 instances of open voting as provided in this section, can see
10 or know for whom any voter has voted or is voting;

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

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

27 (5) It permits each voter to change his or her vote for any
28 candidate and upon any question appearing upon the ballots
29 or ballot labels up to the time when his or her ballot is

30 deposited in the ballot box or his or her ballot is cast by
31 electronic means;

32 (6) It contains ~~a program deck consisting of cards that are~~
33 ~~sequentially numbered or consisting of a computer program~~
34 ~~disk, diskette, tape or other~~ programming media containing
35 sequentially numbered program instructions and coded or
36 otherwise protected from tampering or substitution of the
37 media or program instructions by unauthorized persons and
38 capable of tabulating all votes cast in each election;

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

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

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

48 (10) It permits each voter in primary elections to vote only
49 for the candidates of the party for which he or she is legally
50 permitted to vote and precludes him or her from voting for
51 any candidate seeking nomination by any other political

52 party, permits him or her to vote for the candidates, if any,
53 for nonpartisan nomination or election and permits him or
54 her to vote on public questions;

55 (11) It, where applicable, is provided with means for
56 sealing or electronically securing the vote recording device
57 to prevent its use and to prevent tampering with ~~ballot labels~~
58 the device, both before the polls are open or before the
59 operation of the vote recording device for an election is
60 begun and immediately after the polls are closed or after the
61 operation of the vote recording device for an election is
62 completed;

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

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

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

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

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

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

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

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

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

98 ~~(B) Be constructed with frames for the placing of ballot~~
99 ~~labels that the labels upon which are printed the names of~~
100 ~~candidates and their respective parties, titles of offices and~~
101 ~~wording of questions are reasonably protected from mutila-~~
102 ~~tion, disfigurement or disarrangement or are constructed to~~
103 ~~ensure that the screens upon which appear the names of the~~
104 ~~candidates and their respective parties, titles of offices and~~
105 ~~wording of questions are reasonably protected from any~~
106 ~~modification;~~

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

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

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

116 ~~(F) For electronic voting systems that utilize a screen upon~~
117 ~~which votes may be recorded by means of a stylus or by~~
118 ~~means of touch, be constructed to provide for the direct~~
119 ~~electronic recording and tabulating of votes cast in a system~~
120 ~~specifically designed and engineered for the election applica-~~
121 ~~tion;~~

122 ~~(G) For electronic voting systems that utilize a screen upon~~
123 ~~which votes may be recorded by means of a stylus or by~~
124 ~~means of touch, be constructed to prevent any voter from~~
125 ~~voting for more than the allowable number of candidates for~~
126 ~~any office, to include an audible or visual signal, or both,~~
127 ~~warning any voter who attempts to vote for more than the~~
128 ~~allowable number of candidates for any office or who~~
129 ~~attempts to cast his or her ballot prior to its completion and~~
130 ~~are constructed to include a visual or audible confirmation,~~
131 ~~or both, to the voter upon completion and casting of the~~
132 ~~ballot;~~

133 ~~(H) For electronic voting systems that utilize a screen upon~~
134 ~~which votes may be recorded by means of a stylus or by~~
135 ~~means of touch, be constructed to present the entire ballot to~~
136 ~~the voter, in a series of sequential pages, and to ensure that~~
137 ~~the voter sees all of the ballot options on all pages before~~

138 completing his or her vote and to allow the voter to review
139 and change all ballot choices prior to completing and casting
140 his or her ballot;

141 ~~(I) For electronic voting systems that utilize a screen upon~~
142 ~~which votes may be recorded by means of a stylus or by~~
143 ~~means of touch, be constructed to allow election commission-~~
144 ~~ers to spoil a ballot where a voter fails to properly cast his or~~
145 ~~her ballot, has departed the polling place and cannot be~~
146 ~~recalled by a poll clerk to complete his or her ballot;~~

147 ~~(J) For electronic voting systems that utilize a screen upon~~
148 ~~which votes may be recorded by means of a stylus or by~~
149 ~~means of touch, be constructed to allow election commission-~~
150 ~~ers, poll clerks, or both, to designate, mark or otherwise~~
151 ~~record provisional ballots;~~

152 ~~(K) For electronic voting systems that utilize a screen upon~~
153 ~~which votes may be recorded by means of a stylus or by~~
154 ~~means of touch, consist of devices which are independent,~~
155 ~~nonnetworked voting systems in which each vote is recorded~~
156 ~~and retained within each device's internal nonvolatile~~
157 ~~electronic memory and contain an internal security, the~~
158 ~~absence of which prevents substitution of any other device;~~

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

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

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

177 ~~(O) For electronic voting systems that utilize a screen upon~~
178 ~~which votes may be recorded by means of a stylus or by~~
179 ~~means of touch, be constructed with a battery backup system~~
180 ~~in each device to, at a minimum, prevent the loss of any~~

181 ~~votes, as well as all preelection, election and post-election~~
182 ~~activities, including all ballot images and system anomalies,~~
183 ~~stored in the device's internal electronic memory and to~~
184 ~~allow voting to continue for two hours of uninterrupted~~
185 ~~operation in case of an electrical power failure; and~~

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

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

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

199 (B) Be constructed to prevent any voter from voting for
200 more than the allowable number of candidates for any office,
201 to include an audible or visual signal, or both, warning any
202 voter who attempts to vote for more than the allowable

203 number of candidates for any office or who attempts to cast
204 his or her ballot prior to its completion and are constructed
205 to include a visual or audible confirmation, or both, to the
206 voter upon completion and casting of the ballot;

207 (C) Be constructed to present the entire ballot to the voter,
208 in a series of sequential pages, and to ensure that the voter
209 sees all of the ballot options on all pages before completing
210 his or her vote and to allow the voter to review and change
211 all ballot choices prior to completing and casting his or her
212 ballot;

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

217 (E) Be constructed to allow election commissioners, poll
218 clerks, or both, to designate, mark or otherwise record
219 provisional ballots;

220 (F) Consist of devices which are independent,
221 nonnetworked voting systems in which each vote is recorded
222 and retained within each device's internal nonvolatile
223 electronic memory and contain an internal security, the
224 absence of which prevents substitution of any other device;

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

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

232 (I) Be constructed to record all preelection, election and
233 post-election activities, including all ballot images and
234 system anomalies, in each device's internal electronic
235 memory and are to be accessible in electronic or printed
236 form;

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

244 (K) Be constructed to prevent the loss of any votes, as well
245 as all preelection, election and post-election activities,
246 including all ballot images and system anomalies, stored in

247 each device's internal electronic memory even in case of an
248 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 ~~keys~~ 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 ~~print out or~~ tabulation of results is done at the
35 precinct;

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

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

42 (f) If the optical scan ballots from each of the precincts are
43 counted at the central counting center on election night in

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

51 (g) The Secretary of State is hereby directed to propose
52 rules and emergency rules for legislative approval in accor-
53 dance with the provisions of article three, chapter
54 twenty-nine-a of this code in accordance with the provisions
55 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 ~~of preparing~~ 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 ~~one vote recording device per party be provided, except~~
 14 ~~for “independent” voters, which shall be determined under~~
 15 ~~section twenty of this article~~ two vote-recording devices be
 16 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 ~~contain-~~
46 ~~ing a personal electronic ballot (PEB), a programable~~

47 ~~memory chip and a printed paper trail~~ must comply with the
48 applicable requirements of section twenty-six of this article.

49 (f) Not later than one day before the election, the election
50 commissioner of each precinct previously designated by the
51 ballot commissioners shall attend at the office of the clerk of
52 the county commission to receive the necessary election
53 records, books and supplies required by law. The election
54 commissioners shall receive the per diem mileage rate
55 prescribed by law for this service. The election commission-
56 ers shall give the ballot commissioners a sequentially
57 numbered written receipt, on a printed form, provided by the
58 clerk of the county commission, for such records, books and
59 supplies. The receipt shall be prepared in duplicate. One
60 copy of the receipt shall remain with the clerk of the county
61 commission and one copy shall be delivered to the president
62 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) In counties utilizing an electronic voting system where~~
2 ~~votes are to be recorded by means of perforating or by~~
3 ~~touching a screen with a stylus or by means of touch before~~

4 ~~permitting the first voter to vote, the election commissioners~~
5 ~~shall examine the vote-recording devices to ascertain~~
6 ~~whether the ballot labels are arranged as specified on the~~
7 ~~facsimile diagram furnished to the precinct. If the ballot~~
8 ~~labels are arranged incorrectly, the commissioners shall~~
9 ~~immediately notify the clerk of the county commission of the~~
10 ~~foregoing facts in writing, indicating the number of the~~
11 ~~device, and obtain from the clerk a reserve vote-recording~~
12 ~~device and thereafter proceed to conduct the election.~~

13 ~~(b)~~ (a) Any reserve vote-recording device so used is to be
14 prepared for use by the clerk or his or her duly appointed
15 deputy and the reserve vote-recording device is to be
16 prepared, inspected and sealed and delivered to the polling
17 place wherein the seal is to be broken and the device opened
18 in the presence of the precinct election commissioners who
19 shall certify in writing signed by them to the clerk of the
20 county commission, that the reserve vote-recording device
21 was found to be sealed upon delivery to the polling place,
22 that the seal was broken and the device opened in their
23 presence at the polling place. ~~The vote-recording device~~
24 ~~found to have been with incorrect ballot labels is to be~~
25 ~~returned immediately to the custody of the clerk who shall~~

26 ~~then promptly cause the vote-recording device to be re-~~
27 ~~paired, prepared and resealed in order that it may be used as~~
28 ~~a reserve vote-recording device if needed.~~

29 (e) (b) In counties using electronic poll books, the election
30 commissioners shall examine the electronic poll books to
31 ascertain whether the poll books are in working order before
32 allowing any voters to enter the polling location. If the
33 electronic poll books are not in working order, the election
34 commissioners shall contact the county clerk who shall
35 immediately authorize a printed poll book to serve in place
36 of the electronic poll book for that election. A printed poll
37 book may accompany the electronic poll book to each
38 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 ~~or ballot labels, where~~
27 ~~applicable~~ by comparing them with the sample ballots, and
28 determine whether they are in proper working order. They

29 shall open and check the ballots, the electronic poll books, if
30 applicable, supplies, records and forms and post the sample
31 ballots ~~or ballot labels~~ and instructions to voters. Upon
32 ascertaining that all ballots, supplies, electronic poll books,
33 if applicable, records and forms arrived intact, the election
34 commissioners shall certify their findings in writing upon
35 forms provided and collected by the clerk of the county
36 commission over their signatures to the clerk of the county
37 commission. Any discrepancies are to be noted and reported
38 immediately to the clerk of the county commission. The
39 election commissioners shall then number in sequential
40 order the ballot stub of each ballot in their possession and
41 report in writing to the clerk of the county commission the
42 number of ballots received. They shall issue the ballots in
43 sequential order to each voter.

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

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

53 (g) Where applicable, any voter who spoils, defaces or
54 mutilates the ballot delivered to him or her, on returning the
55 ballot to the poll clerks, shall receive another in its place.
56 Every person who does not vote any ballot delivered to him
57 or her shall, before leaving the election room, return the
58 ballot to the poll clerks. When a spoiled or defaced ballot is
59 returned, the poll clerks shall make a minute of the fact on
60 the poll books, at the time, write the word "spoiled" across
61 the face of the ballot and place it in an envelope for spoiled
62 ballots.

63 Immediately on closing the polls, the election commission-
64 ers shall ascertain the number of spoiled ballots during the
65 election and the number of ballots remaining not voted. The
66 election commissioners shall also ascertain from the poll
67 books the number of persons who voted and shall report, in
68 writing signed by them to the clerk of the county commis-
69 sion, any irregularities in the ballot boxes, the number of
70 ballots cast, the number of ballots spoiled during the election
71 and the number of ballots unused. All unused ballots are to

72 be returned at the same time to the clerk of the county
73 commission who shall count them and record the number.
74 All unused ballots shall be stored with the other election
75 materials and destroyed at the expiration of twenty-two
76 months.

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

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

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

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

110 (k) The precinct election commissioners shall prepare a
111 report in quadruplicate of the number of voters who have
112 voted and, where electronic voting systems are used that
113 utilize a screen on which votes may be recorded by means of
114 a stylus or by means of touch, the number of ballots that
115 were spoiled, as indicated by the poll books, and shall place

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

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

137 remaining copies of the report, which are to be immediately
138 mailed to the clerk of the county commission.

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

§3-4A-20. “Independent” voting in primary elections.

1 If at any primary elections, nonpartisan candidates for
2 office and public questions are submitted to the voters on
3 which persons registered as “independent” are entitled to
4 vote, as provided in section eighteen, article two of this
5 chapter, the election officers shall provide a vote recording
6 device, where applicable, or the appropriate ballot to be
7 marked by an electronically sensible pen or ink, or by means
8 of a stylus or by means of touch or by other electronic means,
9 so that “independent” voters may vote only those portions of
10 the ballot relating to the nonpartisan candidates and the
11 public questions submitted, or shall provide a ballot contain-
12 ing only provisions for voting for those candidates and upon
13 those issues submitted common to the ballots provided to all
14 voters regardless of political party affiliation, or both:
15 Provided, That “independent” or “unaffiliated” voters may

16 vote in partisan primary elections as provided in section
17 thirty-one, article two of this chapter.

18 ~~In counties utilizing electronic voting systems in which~~
19 ~~votes are recorded by perforating, if vote recording devices~~
20 ~~are not available for the “independent” voters, provisions are~~
21 ~~to be made for sealing the partisan section or sections of the~~
22 ~~ballot or ballot labels on a vote recording device using~~
23 ~~temporary seals, thus permitting the independent voter to~~
24 ~~vote for the nonpartisan section or sections of the ballot or~~
25 ~~ballot labels. After the “independent” voter has voted, the~~
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 punch card ballots, the ballot cards~~
40 ~~and secrecy envelopes for a precinct are to be removed from~~
41 ~~the box and examined for write-in votes before being~~
42 ~~separated and stacked for delivery to the tabulator. Immedi-~~
43 ~~ately after valid write-in votes are tallied, the ballot cards~~
44 ~~are to be delivered to the tabulator. No write-in vote may be~~
45 ~~counted for an office unless the voter has entered the name~~
46 ~~of that office and the name of an official write-in candidate~~
47 ~~for that office on the inside of the secrecy envelope, either by~~
48 ~~writing, affixing a sticker or label or placing an ink-stamped~~
49 ~~impression thereon;~~

50 ~~(2)~~ (1) In systems using ballots marked with electronically
51 sensible ink, ballots are to be removed from the boxes and
52 stacked for the tabulator which separates ballots containing
53 marks for a write-in position. Immediately after tabulation,

54 the valid write-in votes are to be tallied. No write-in vote
55 may be counted for an office unless the voter has entered the
56 name of an official write-in candidate for that office on the
57 line provided, either by writing, affixing a sticker or placing
58 an ink-stamped impression thereon;

59 ~~(3)~~ (2) In systems using ballots in which votes are recorded
60 upon screens with a stylus or by means of touch, the person-
61 alized electronic ballots are to be removed from the contain-
62 ers and stacked for the tabulator. Systems using ballots in
63 which votes are recorded upon screens with a stylus or by
64 means of touch are to tally write-in ballots simultaneously
65 with the other ballots;

66 ~~(4)~~ (3) When more than one person is to be elected to an
67 office and the voter desires to cast write-in votes for more
68 than one official write-in candidate for that office, a single
69 punch or mark, as appropriate for the voting system, in the
70 write-in location for that office is sufficient for all write-in
71 choices. When there are multiple write-in votes for the same
72 office and the combination of choices for candidates on the
73 ballot and write-in choices for the same office exceed the
74 number of candidates to be elected, the ballot is to be

75 duplicated or hand counted, with all votes for that office
76 rejected;

77 ~~(5)~~ (4) Write-in votes for nomination for any office and
78 write-in votes for any person other than an official write-in
79 candidate are to be disregarded;

80 ~~(6)~~ (5) When a voter casts a straight ticket vote and also
81 punches or marks the location for a write-in vote for an
82 office, the straight ticket vote for that office is to be rejected,
83 whether or not a vote can be counted for a write-in candi-
84 date; and

85 ~~(7)~~ (6) Official write-in candidates are those who have filed
86 a write-in candidate's certificate of announcement and have
87 been certified according to the provisions of section four-a,
88 article six of this chapter.

89 (d) If any ballot card is damaged or defective so that it
90 cannot properly be counted by the automatic tabulating
91 equipment, a true duplicate copy is to be made of the
92 damaged ballot card in the presence of representatives of
93 each political party on the ballot and substituted for the
94 damaged ballot card. All duplicate ballot cards are to be
95 clearly labeled "duplicate" and are to bear a serial number

96 which is recorded on the damaged or defective ballot card
97 and on the replacement ballot card.

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

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

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