

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 495**

4 (By Senators Palumbo and Plymale)

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6 _____
7 [Originating in the Committee on the Judiciary;
8 reported February 22, 2011.]
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11
12 A BILL to repeal §3-4A-13a of the Code of West Virginia, 1931, as
13 amended; and to amend and reenact §3-4A-2, §3-4A-3, §3-4A-4,
14 §3-4A-6, §3-4A-9, §3-4A-9a, §3-4A-9b, §3-4A-10, §3-4A-10a,
15 §3-4A-13, §3-4A-17, §3-4A-19, §3-4A-20 and §3-4A-27, all
16 relating generally to the use of electronic voting systems;
17 defining terms; setting forth the requirements of electronic
18 voting systems; requiring public meetings held on adopting
19 electronic voting be held at least six months prior to the
20 next election; providing that if an electronic voting system
21 is terminated, it must be replaced by an electronic voting
22 system that complies with federal law; deleting the
23 requirement that the purchase or lease of vote-recording
24 devices must be paid in cash; deleting outmoded terms and
25 voting systems no longer being used; updating technical
26 terminology; requiring at least two vote-recording devices be

1 provided at each precinct in a primary election; and providing
2 that independent voters may vote in primaries as otherwise
3 provided in code.

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

5 That §3-4A-13a of the Code of West Virginia, 1931, as amended,
6 be repealed; and that §3-4A-2, §3-4A-3, §3-4A-4, §3-4A-6, §3-4A-9,
7 §3-4A-9a, §3-4A-9b, §3-4A-10, §3-4A-10a, §3-4A-13, §3-4A-17,
8 §3-4A-19, §3-4A-20 and §3-4A-27 of said code be amended and
9 reenacted, all to read as follows:

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

11 **§3-4A-2. Definitions.**

12 As used in this article, unless otherwise specified:

13 (1) "Automatic tabulating equipment" means all apparatus
14 necessary to electronically count votes recorded on ballots and
15 tabulate the results;

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

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

25 (4) "Electronic poll book" means an electronic device
26 containing the same voter registration information maintained by

1 the county clerk in a printed poll book.

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

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

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

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

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

26 **§3-4A-3. Procedure for adopting electronic voting systems.**

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

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

13 **§3-4A-4. Procedure for terminating use of electronic voting**
14 **systems.**

15 The use of an electronic voting system may be terminated:
16 (1) By a majority of the members of the county commission
17 voting to terminate use of the system and replace it with a
18 different voting system meeting the requirements of the Help
19 America Vote Act of 2002, 42 U.S.C. §15301, et seq. at a special
20 public meeting called for the purpose of said termination, with due
21 notice thereof published as a Class II-0 legal advertisement in
22 compliance with the provisions of article three, chapter fifty-nine
23 of this code, and the publication area for such publication shall
24 be the county involved: *Provided, That such meeting shall be held*
25 not less than six months prior to a general election or six months

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

23 If five percent or more of the registered voters of such
24 county shall sign a petition requesting that the use of an
25 electronic voting system be terminated in such county and such
26 petition be filed with the county commission of such county within

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

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

1 such county voting upon the question, the use of an electronic
2 voting system shall thereby continue.

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

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

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

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

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

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

25 (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~~
26 ~~purpose, ballots containing~~ the names of persons for whom he or she

1 desires to vote whose names do not appear upon the ballots; ~~or~~
2 ~~ballot labels;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ~~(D)~~ (C) Be constructed to ensure that a voter may easily learn
26 the method of operating it and may expeditiously cast his or her

1 vote for all candidates of his or her choice and upon any public
2 question;

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

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

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

21 ~~(H) 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, be constructed to present the entire ballot to the voter, in~~
24 ~~a series of sequential pages, and to ensure that the voter sees all~~
25 ~~of the ballot options on all pages before completing his or her~~
26 ~~vote and to allow the voter to review and change all ballot choices~~

1 ~~prior to completing and casting his or her ballot;~~

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

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

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

20 ~~(L) For 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, store each vote in no fewer than three separate,~~
23 ~~independent, nonvolatile electronic memory components and that each~~
24 ~~device contains comprehensive diagnostics to ensure that failures~~
25 ~~do not go undetected;~~

26 ~~(M) For electronic voting systems that utilize a screen upon~~

1 ~~which votes may be recorded by means of a stylus or by means of~~
2 ~~touch, contain a unique, embedded internal serial number for~~
3 ~~auditing purposes for each device used to activate, retain and~~
4 ~~record votes;~~

5 ~~(N) 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 to record all preelection, election and~~
8 ~~post-election activities, including all ballot images and system~~
9 ~~anomalies, in each device's internal electronic memory and are to~~
10 ~~be accessible in electronic or printed form;~~

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

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

26 (15) Electronic voting systems that utilize a screen upon

1 which votes may be recorded by means of a stylus or by means of
2 touch shall:

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

6 (B) Be constructed to prevent any voter from voting for more
7 than the allowable number of candidates for any office, to include
8 an audible or visual signal, or both, warning any voter who
9 attempts to vote for more than the allowable number of candidates
10 for any office or who attempts to cast his or her ballot prior to
11 its completion and are constructed to include a visual or audible
12 confirmation, or both, to the voter upon completion and casting of
13 the ballot;

14 (C) Be constructed to present the entire ballot to the voter,
15 in a series of sequential pages, and to ensure that the voter sees
16 all of the ballot options on all pages before completing his or her
17 vote and to allow the voter to review and change all ballot choices
18 prior to completing and casting his or her ballot;

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

23 (E) Be constructed to allow election commissioners, poll
24 clerks, or both, to designate, mark or otherwise record provisional
25 ballots;

26 (F) Consist of devices which are independent, nonnetworked

1 voting systems in which each vote is recorded and retained within
2 each device's internal nonvolatile electronic memory and contain an
3 internal security, the absence of which prevents substitution of
4 any other device;

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

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

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

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

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

1 **§3-4A-9a. Authorization for ballot-marking voting systems; minimum**
2 **requirements.**

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

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

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

23 (1) The ballot-marking accessible voting system, system
24 firmware and programming software must be certified by an
25 independent testing authority, according to current federal voting
26 system standards and be approved by the State Elections Commission

1 prior to entering into any contract.

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

4 (A) Alert the voter if the voter has made more ballot
5 selections than the law allows for an individual office or ballot
6 issue;

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

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

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

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

17 (F) Allow blind or visually impaired voters to vote in
18 complete privacy;

19 (G) Provide voters with an opportunity to change ballot
20 selections, or correct errors, before the ballot is marked for
21 voting, including the opportunity to correct the error through the
22 issuance of a replacement ballot if the voter was otherwise unable
23 to change the ballot or correct the error;

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

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

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

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

8 (L) Allow the voter to magnify all ballot choices and to
9 adjust both the volume of the audio feature and the speed of ballot
10 presentation;

11 (M) Allow the voter to employ his or her own headset as well
12 as the headset provided with the ballot-marking device while being
13 equipped with multiple output connections to accommodate different
14 headsets;

15 (N) Have multiple-language capability; and

16 (O) Allow the voter to verify that:

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

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

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

1 **§3-4A-9b. Authorization for precinct ballot-scanning device;**
2 **minimum requirements.**

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

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

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

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

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

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

25 (3) Allow voters an opportunity to change ballot selections,
26 or correct errors, including the opportunity to correct the error

1 through the issuance of a replacement ballot if the voter was
2 otherwise unable to change the ballot or correct the error.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **§3-4A-13. Inspection of ballots, electronic poll books and**
19 **vote-recording devices; duties of county commission,**
20 **ballot commissioners and election commissioners;**
21 **records relating to ballots and vote-recording**
22 **devices; receipt of election materials by ballot**
23 **commissioners.**

24 (a) When the clerk of the county commission has completed the
25 preparation of the ballots and of any electronic poll books and

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

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

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

25 (d) The vote-recording devices, the electronic poll books and
26 the ballots shall then be secured in double lock rooms. The clerk

1 and the president or president pro tempore of the county commission
2 shall each have a key. The rooms shall be unlocked only in their
3 presence and only for the removal of the devices, electronic poll
4 books and the ballots for transportation to the polls. Upon
5 removal of the devices, the electronic poll books and the ballots,
6 the clerk and president or president pro tempore of the county
7 commission shall certify in writing signed by them that the
8 devices, the electronic poll books and packages of ballots were
9 found to be sealed when removed for transportation to the polls.

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

18 (f) Not later than one day before the election, the election
19 commissioner of each precinct previously designated by the ballot
20 commissioners shall attend at the office of the clerk of the county
21 commission to receive the necessary election records, books and
22 supplies required by law. The election commissioners shall receive
23 the per diem mileage rate prescribed by law for this service. The
24 election commissioners shall give the ballot commissioners a
25 sequentially numbered written receipt, on a printed form, provided
26 by the clerk of the county commission, for such records, books and

1 supplies. The receipt shall be prepared in duplicate. One copy of
2 the receipt shall remain with the clerk of the county commission
3 and one copy shall be delivered to the president or president pro
4 tempore of the county commission.

5 **§3-4A-17. Check of vote-recording devices and electronic poll**
6 **books before use; corrections; reserve vote-recording**
7 **devices.**

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

19 ~~(b)~~ (a) Any reserve vote-recording device ~~so~~ used is to be
20 prepared for use by the clerk or his or her duly appointed deputy
21 and the reserve vote-recording device is to be prepared, inspected
22 and sealed and delivered to the polling place wherein the seal is
23 to be broken and the device opened in the presence of the precinct
24 election commissioners who shall certify in writing signed by them
25 to the clerk of the county commission, that the reserve

1 vote-recording device was found to be sealed upon delivery to the
2 polling place, that the seal was broken and the device opened in
3 their presence at the polling place. ~~The vote-recording device
4 found to have been with incorrect ballot labels is to be returned
5 immediately to the custody of the clerk who shall then promptly
6 cause the vote-recording device to be repaired, prepared and
7 resealed in order that it may be used as a reserve vote-recording
8 device if needed.~~

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

18 **§3-4A-19. Conducting electronic voting system elections**
19 **generally; duties of election officers; penalties.**

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

24 (b) In primary elections, before a voter is permitted to
25 occupy the voting booth, the election commissioner representing the
26 party to which the voter belongs shall direct the voter to the

1 vote-recording device or supply the voter with a ballot, as may be
2 appropriate, which will allow the voter to vote only for the
3 candidates who are seeking nomination on the ticket of the party
4 with which the voter is affiliated or for unaffiliated voters in
5 accordance with section thirty-one, article two of this chapter.

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

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

1 discrepancies are to be noted and reported immediately to the clerk
2 of the county commission. The election commissioners shall then
3 number in sequential order the ballot stub of each ballot in their
4 possession and report in writing to the clerk of the county
5 commission the number of ballots received. They shall issue the
6 ballots in sequential order to each voter.

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

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

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

25 Immediately on closing the polls, the election commissioners
26 shall ascertain the number of spoiled ballots during the election

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

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

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

23 (j) Where ballots are used, the voter, after he or she has
24 marked his or her ballot, shall, before leaving the voting booth,
25 place the ballot inside the envelope or sleeve provided for this
26 purpose, with the stub extending outside the envelope, and return

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

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

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

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

22 **§3-4A-27. Proceedings at the central counting center.**

23 (a) All proceedings at the central counting center are to be
24 under the supervision of the clerk of the county commission and are
25 to be conducted under circumstances which allow observation from a
26 designated area by all persons entitled to be present. The

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

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

1 badge or identification card. Upon completion of the deputies'
2 duties, the badges or identification cards are to be returned to
3 the county clerk.

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

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

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

26 ~~(3)~~ (2) In systems using ballots in which votes are recorded

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

6 ~~(4)~~ (3) When more than one person is to be elected to an
7 office and the voter desires to cast write-in votes for more than
8 one official write-in candidate for that office, a single punch or
9 mark, as appropriate for the voting system, in the write-in
10 location for that office is sufficient for all write-in choices.
11 When there are multiple write-in votes for the same office and the
12 combination of choices for candidates on the ballot and write-in
13 choices for the same office exceed the number of candidates to be
14 elected, the ballot is to be duplicated or hand counted, with all
15 votes for that office rejected;

16 ~~(5)~~ (4) Write-in votes for nomination for any office and
17 write-in votes for any person other than an official write-in
18 candidate are to be disregarded;

19 ~~(6)~~ (5) When a voter casts a straight ticket vote and also
20 ~~punches or~~ marks the location for a write-in vote for an office,
21 the straight ticket vote for that office is to be rejected, whether
22 or not a vote can be counted for a write-in candidate; and

23 ~~(7)~~ (6) Official write-in candidates are those who have filed
24 a write-in candidate's certificate of announcement and have been
25 certified according to the provisions of section four-a, article
26 six of this chapter.

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

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

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

24 (g) As soon as possible after the completion of the count, the
25 clerk of the county commission shall have the vote recording
26 devices properly boxed or securely covered and removed to a proper

1 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.)