

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4

A Bill

ACT 446 OF 1997
HOUSE BILL 1773

5 By: House Committee on State Agencies and Governmental Affairs
6
7

For An Act To Be Entitled

8
9 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED § 7-5-501 TO
10 ELIMINATE THE REQUIREMENT THAT A PRECINCT HAVE A CERTAIN
11 NUMBER OF VOTERS TO HAVE A VOTING MACHINE, TO ELIMINATE
12 THE ABILITY TO CONSOLIDATE PRECINCTS IN ORDER TO USE A
13 VOTING MACHINE, TO PERMIT THE COUNTY BOARDS OF ELECTION
14 COMMISSIONER IN COUNTIES WITH VOTING MACHINES TO AUTHORIZE
15 ALTERNATIVE METHODS OF VOTING IN CERTAIN PRECINCTS; TO
16 REPEAL ARKANSAS CODE ANNOTATED § 7-5-616 PERTAINING TO
17 ULTRAVIOLET INK; TO AMEND VARIOUS SECTIONS OF TITLE 7,
18 SUBCHAPTER 5, SECTIONS 5, 6, 7 AND 8 TO MAKE TECHNICAL
19 CORRECTIONS; AND FOR OTHER PURPOSES."
20

Subtitle

21
22 "TO AMEND VARIOUS SECTIONS OF TITLE 7,
23 SUBCHAPTER 5, SECTIONS 5, 6, 7 AND 8
24 PERTAINING TO VOTING MACHINES,
25 ELECTRONIC VOTING RETURNS AND CANVASSING
26 AND ELECTION CONTESTS."
27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. Arkansas Code Annotated § 7-5-501 is amended to read as
31 follows:

32 "7-5-501. Acquisition - Places of installation.

33 (a) Voting machines authorized as set forth in this section and §§
34 7-5-604 and 7-5-605 may be acquired and used in any election conducted in a
35 municipality or county upon the adoption of an ordinance therefor by the
36 governing body of the municipality or the quorum court of the county.

37 ~~(b) If voting machines are acquired by a municipality or county, the~~

1 ~~county board of election commissioners shall install them in all precincts or~~
 2 ~~wards in which three hundred (300) or more persons voted in the preceding~~
 3 ~~biennial general election.~~

4 ~~— (c) Voting machines may be provided for all precincts in all counties in~~
 5 ~~which one hundred (100) or more persons voted in the last preceding comparable~~
 6 ~~election. Precincts voting less than one hundred (100) persons may be~~
 7 ~~consolidated in conformity of the laws of this state so that the total vote of~~
 8 ~~the precincts would have exceeded one hundred (100) in the above primary or~~
 9 ~~general election, or in a subsequent primary or general election, and a voting~~
 10 ~~machine may then be installed in that consolidated precinct.~~

11 ~~— (d)(b) If it shall be impossible to supply every election precinct~~
 12 ~~polling site with voting machines at any election following the adoption of~~
 13 ~~the machines by a county or city, then as many machines may be supplied as it~~
 14 ~~is possible to procure, and the machines shall be used in precincts of the~~
 15 ~~county designated by the county board of election commissioners in general~~
 16 ~~elections and by the county central committee in primary elections. The~~
 17 ~~county board of election commissioners may authorize the use of an alternate~~
 18 ~~method of voting at a polling site if the board determines that it is~~
 19 ~~impractical to supply every election precinct with a voting machine.~~

20 ~~— (e)(c)(1) In municipalities or counties which acquired voting machines~~
 21 ~~or electronic voting systems, or which voted to do so before April 6, 1979,~~
 22 ~~nothing in this section and §§ 7-5-604 and 7-5-605 or present laws shall~~
 23 ~~prohibit such municipalities or counties from using any method of voting~~
 24 ~~authorized by law, whether singly or in combination with any other authorized~~
 25 ~~voting method. However, except as authorized under subdivision (e)(2)-(c)(2)~~
 26 ~~of this section, no municipality or county shall implement the method of~~
 27 ~~voting and vote counting which was in use prior to the election that~~
 28 ~~authorized voting machines or electronic voting systems without an election~~
 29 ~~authorizing such a change.~~

30 (2) The county board of election commissioners may authorize the
 31 use of an alternate method of voting if the board determines that the voting
 32 machines or electronic voting system currently in use is likely to malfunction
 33 or cause questionable results due to the operational limits of the machines or
 34 system."

35

36 SECTION 2. Arkansas Code Annotated § 7-5-506(b) is amended to read as

1 follows:

2 "(b) All machines in any county or city must be of the same type,
3 except as otherwise provided by law."

4

5 SECTION 3. Arkansas Code Annotated § 7-5-507 is amended to read as
6 follows:

7 "7-5-507. Shipment - Demonstration - Assistance in operating machine.

8 (a) The companies that obtain contracts to sell mechanical voting
9 machines shall ship the machines to the county board of election commissioners
10 of the county in which the machines are to be used, with the cost of shipment
11 to be borne by the manufacturer.

12 (b) The manufacturer shall, prior to the first election at which the
13 machines are placed in use, demonstrate the machine to ~~the judges and clerks~~
14 ~~of the election~~ officials. The date for the demonstration shall be set by the
15 county board of election commissioners ~~or the county central committee~~.

16 (c) On the date of the first election at which voting machines are
17 used, manufacturers shall make employees available in each county where the
18 machines are in operation to assist the county board of election commissioners
19 in any manner that will expedite voting and provide efficient operation of
20 voting machines. After the first election, the county board of election
21 commissioners shall obtain the assistance needed in operating the machines,
22 and the board shall collect and pay expenses for this assistance as it would
23 for any other election cost.

24 (d) The county board of election commissioners shall have complete
25 control and supervision of machines at all ~~general elections, and the county~~
26 ~~central committee at primary elections.~~"

27

28 SECTION 4. Arkansas Code Annotated § 7-5-508(b) is amended to read as
29 follows:

30 "(b) The cost of preparing voting machines for all elections at which
31 they are to be used, ~~including~~ excluding ~~primary elections held by the~~
32 ~~majority or the minority parties~~, including the cost of all necessary supplies
33 and technical assistance required in preparing the machine and the cost of
34 transporting voting machines to and from the polling ~~places~~ sites in each
35 county, shall be paid by the county in which the machines are used from the
36 county general fund."

1

2 SECTION 5. Arkansas Code Annotated § 7-5-510(b) is amended to read as
3 follows:

4 "(b) A voter may file a complaint form with an election ~~judge~~ official
5 who shall forward the complaint form to the county board of election
6 commissioners. It shall be the duty of the county board of election
7 commissioners to investigate complaints regarding the function of a voting
8 machine."

9

10 SECTION 6. Arkansas Code Annotated § 7-5-511(b) is amended to read as
11 follows:

12 "(b) The ballot label shall be printed and furnished by the county
13 board of election commissioners in ~~general all~~ elections ~~and by the county~~
14 ~~central committee in primary elections~~. It shall be printed in ~~black~~ dark ink
15 in plain and clear type on clear white material of a size that will fit the
16 machine. Office titles may be printed in red."

17

18 SECTION 7. Arkansas Code Annotated § 7-5-512 is amended to read as
19 follows:

20 "7-5-512. Certification of label - Equipment furnished to polling ~~places~~
21 sites.

22 (a) In all elections whether state, district, or municipal, wherein
23 voting machines are used, it shall be the duty of the county board of election
24 commissioners ~~or the county central committee~~ to prepare and certify the
25 ballot label to be used in the voting machine.

26 (b) In addition, it shall furnish the following paraphernalia for each
27 polling ~~place~~ site:

28 (1) Two (2) or more diagrams or sample ballot labels of suitable
29 size representing the part of the face of the voting machine that will be in
30 use in the election and accompanied by illustrated directions for voting on
31 the machine. The diagrams shall be posted prominently outside the enclosed
32 space within the polling ~~place~~ site;

33 (2) An envelope for keeping the keys to the machine during the
34 election, for the return of the keys, and such other election materials and
35 supplies as may be necessary, or as may be required by law;

36 (3) Suitable tabulation blanks as a substitute for the tally

1 sheets provided for in elections where voting machines are not used.

2 (c) This equipment shall be delivered by the county board of election
 3 commissioners to ~~the judges of the election~~ officials ~~or to the county central~~
 4 ~~committee.~~"

5

6 SECTION 8. Arkansas Code Annotated § 7-5-513 is amended to read as
 7 follows:

8 "7-5-513. Machine breakdown - Delivery of ballot materials.

9 The county board of election commissioners ~~or county central committee~~
 10 in any ~~township~~ county in which voting machines are to be used shall be ready
 11 at any time on election day to deliver ballots, ballot boxes, replacement
 12 machines if available, or other necessary equipment required by law for voting
 13 by paper ballot, upon notice that any voting machine is out of order or fails
 14 to work to any precinct in the county, town, or city."

15

16 SECTION 9. Arkansas Code Annotated § 7-5-514 is repealed.

17 ~~7-5-514. Both machines and ballots used.~~

18 ~~(a) If, in the judgment of the county board of election commissioners~~
 19 ~~or the committee, the number of voters in any precinct in a county where a~~
 20 ~~machine is used for voting is so large that the voting machine used in the~~
 21 ~~precinct will not register the vote of all the voters in the precinct, the~~
 22 ~~commission or committee is authorized to use in those precincts, at the same~~
 23 ~~polling place, voting machines and also printed ballots. The voting by printed~~
 24 ~~ballot shall be subject to all the restrictions and regulations prescribed by~~
 25 ~~law. It shall be the duty of the county board of election commissioners or the~~
 26 ~~central committee to furnish to the precincts the necessary ballots and other~~
 27 ~~equipment necessary for voting by ballot when called upon.~~

28 ~~(b) In a county where voting machines are used in one (1) or more~~
 29 ~~cities and the remainder of the county shall be using paper ballots, the~~
 30 ~~applicable commission shall distribute election material and ballot boxes.~~

31

32 SECTION 10. Arkansas Code Annotated § 7-5-515(c) is repealed.

33 ~~(c) The duties described in this section for the commission shall be~~
 34 ~~performed by the county central committee in primary elections.~~

35

36 SECTION 11. Arkansas Code Annotated § 7-5-516(a) is amended to read as

1 follows:

2 "(a) Before the commission ~~or committee~~ begins the preparation of the
3 machines for any election, it shall mail a notice in due time to candidates or
4 any representatives designated by candidates stating:

5 (1) The time and place the machines will be prepared for the
6 election; and

7 (2) A time at which one (1) representative of each candidate may
8 inspect to see that the machines are in proper condition for use in the
9 election."

10

11 SECTION 12. Arkansas Code Annotated § 7-5-517(c) and (d) are amended to
12 read as follows:

13 "(c) The county board of election commissioners ~~or the county central~~
14 ~~committee~~ shall then, in the presence of the candidates or their
15 representatives, certify as to the numbers of the machines, that all of the
16 public candidate and question counters are set at zero (000), and as to the
17 number of the seal and the number registered on the protective counter of the
18 machine.

19 (d) The envelope holding the keys shall be kept by the county board of
20 election commissioners ~~or the county central committee~~ until turned over for
21 delivery to the judges election officials with the election equipment at the
22 polling ~~place~~ site on election day."

23

24 SECTION 13. Arkansas Code Annotated § 7-5-518 is amended to read as
25 follow:

26 "7-5-518. Machines locked until polls open - Adjustment of counters.

27 (a) The machine shall remain locked against voting until the polls are
28 formally opened and shall not be operated except by voters for voting.

29 (b)(1) If any counter or tabulator except the protective counter is
30 found not to register zero (000), the ~~judges and clerks~~ election officials
31 shall immediately notify the county board of election commissioners ~~or~~
32 ~~committee~~, who shall, if practical, cause the counters to be adjusted at zero
33 (000).

34 (2) If it shall be impractical to readjust the counters before
35 the time set for opening the polls, the ~~judges~~ election officials shall
36 immediately make a written statement of the designating letter and number on

1 each counter, together with the number registered, and shall post it upon the
 2 walls of the polling room, where it shall remain throughout the election day.
 3 In filling out the tabulation sheets, they shall subtract that number from the
 4 number then registered.

5 (c) If the machine is provided with a device for embossing, printing,
 6 or photographing candidate and question counters, thereby producing a return
 7 record of total votes cast, in lieu of opening the counter compartment door,
 8 the ~~judges and clerks~~ election officials shall proceed to operate the
 9 mechanism provided to produce one (1) before election proof sheet showing
 10 whether the candidate and question counters register zero (000) and shall sign
 11 the prescribed certificate and post the proof sheet upon the wall of the
 12 polling room where it shall remain throughout the election day. In completing
 13 the return record they shall subtract that number, if any, from the number
 14 then registered."

15

16 SECTION 14. Arkansas Code Annotated § 7-5-519 is amended to read as
 17 follows:

18 "7-5-519. Unlocking machine for vote - Custody of keys.

19 When the machine has been unlocked and opened for voting, the keys shall
 20 be placed in the envelope provided. The envelope shall then be sealed and
 21 signed by each of the ~~judges~~ election officials. The keys shall not be used
 22 during the election except in an emergency, and then only under supervision of
 23 the county board of election commissioners ~~or the committee~~. The envelope
 24 shall be kept with the other election equipment at the polling ~~place~~ site."

25

26 SECTION 15. Arkansas Code Annotated § 7-5-520 is amended to read as
 27 follows:

28 "7-5-520. Voter instruction using mechanical model.

29 The mechanical demonstrator model, during the election, shall be located
 30 on the ~~judges'~~ election officials' table. Each voter shall, before entering
 31 the machine, be instructed regarding its operation and such instructions
 32 illustrated on the model, and the voter shall be given the opportunity to
 33 operate the model. The voter's attention shall also be called to the diagram
 34 of the face of the machine, so that the voter shall become familiar with the
 35 locations of the questions, the names of the offices, and the names of the
 36 candidates."

1

2 SECTION 16. Arkansas Code Annotated § 7-5-521(c) is amended to read as
3 follows:

4 "(c) After the opening of the polls, ~~neither the judge nor any clerk of~~
5 the election officials shall not allow any person to pass to the part of the
6 room where the machine is situated, except for the purpose of voting."

7

8 SECTION 17. Arkansas Code Annotated § 7-5-522 is amended to read as
9 follows:

10 "7-5-522. Voting procedure.

11 (a) Where a voter presents himself for the purpose of voting, the
12 ~~judges~~ election officials shall ascertain whether he is properly qualified and
13 registered pursuant to § 7-5-305.

14 ~~—— (b) If he is qualified and registered, one of the judges shall announce~~
15 ~~the name of the voter and shall permit him to enter the voting machine booth~~
16 ~~for the purpose of casting his vote.~~

17 ~~—— (c)(b)~~ Only one (1) voter at a time shall be permitted to enter a
18 voting machine booth. Having cast his vote, the voter shall at once emerge
19 from the booth and leave the polling room by the exit provided.

20 ~~—— (d)(c)~~ No voter shall remain in the voting booth longer than five (5)
21 minutes, if voters are waiting in line. If voters are waiting in line, it
22 shall be the duty of the ~~judges~~ election officials to require the voter to
23 leave the voting booth after five (5) minutes have elapsed. If any voter fails
24 to leave the booth after having been notified that five (5) minutes have
25 elapsed, the ~~judges~~ election officials shall cause him to be removed by
26 police, peace officer, or bailiff if necessary.

27 ~~—— (e)(d)~~ No voter after having emerged from the voting machine booth
28 shall be permitted to reenter it on any pretext whatever."

29

30 SECTION 18. Arkansas Code Annotated § 7-5-523 is amended to read as
31 follows:

32 "7-5-523. Assistance to disabled voters.

33 (a) If a voter informs the election ~~judges~~ officials that the voter is
34 unable, because the voter cannot read or write or because of physical,
35 sensory, or other disability, or other legal cause, to cast his ballot by
36 voting machine and needs the assistance of some other person in casting his

1 ballot, that voter may be assisted by two (2) election ~~judges~~ officials, or by
 2 a person selected by the voter, who shall operate the machine so as to vote
 3 the ballot in accordance with the voter's wishes, and shall be permitted to
 4 keep the curtain of the machine closed no longer than five (5) minutes. The
 5 laws of this state with respect to assisting persons with disabilities in the
 6 casting of votes upon printed ballots shall govern, insofar as is practicable,
 7 the assistance of a voter in casting his ballot by voting machine.

8 (b) Any voter because of physical, sensory, or other disability who
 9 presents himself or herself for voting by voting machine and who then informs
 10 ~~the presiding election sheriff of each~~ election official at the polling place
 11 site that he or she is unable to stand in line for extended periods of time
 12 shall be entitled to and assisted by ~~the election sheriff~~ an election official
 13 to advance to the head of any line of voters then waiting in line to vote at
 14 the polling ~~place~~ site."

15

16 SECTION 19. Arkansas Code Annotated § 7-5-526 is amended to read as
 17 follows:

18 "7-5-526. Closing of polls - Locking machines - ~~Judges' Election~~
 19 officials certificate.

20 (a) At the official time for closing the polls, upon termination of the
 21 voting the election ~~judges~~ officials shall announce that the polls have closed
 22 and shall lock the machine or machines in the presence of all persons ~~duly~~
 23 authorized to be present against further voting.

24 (b) At the same time, the election ~~judges~~ officials shall sign a
 25 certificate provided by the county board of election commissioners ~~or the~~
 26 ~~central committee~~ stating that the machines were locked and sealed and giving
 27 the exact time, the number of votes shown on the public counters which shall
 28 be the total number of votes cast on the machines in the particular precinct,
 29 the number on the seal, and the number registered on the protective counters."

30

31 SECTION 20. Arkansas Code Annotated § 7-5-527 is amended to read as
 32 follows:

33 "7-5-527. Exposure of count - Tabulation - Verification - Return record
 34 - Official signatures.

35 (a)(1) The ~~judges~~ election officials shall then expose the count in the
 36 presence of all persons authorized to be present.

1 (2) The ~~judges~~ election officials or the one (1) of them who has
2 been selected by the others to preside shall read in the order in which the
3 office or questions are arranged on the machine, and announce in a loud and
4 audible voice the indicated number on each counter for each candidate's name
5 and the totals as shown by the counter numbers.

6 (3) In the same manner, he shall announce the results on each
7 question that may have been up for vote.

8 (4) The vote, as so registered, counted, and tabulated, shall be
9 entered on the proper tabulation blanks in ink by ~~the clerks of~~ the election
10 officials. The entries shall be made in the same order in the space provided
11 next to the name, officer, or question voted on.

12 (5) The figures shall again be verified by being called off in
13 the same manner from the counters of the machine by ~~the judge or clerk an~~
14 election official of the minority party at that particular precinct.

15 (b) It is the intention of this section to accord a full, complete, and
16 public view of the result of the election to all ~~judges, clerks,~~ election
17 officials and designated watchers for the candidates or parties.

18 (c)(1) If the machine is provided with a device for embossing,
19 printing, or photographing candidate and question counters, it shall not be
20 necessary to open the doors concealing the counters.

21 (2) The ~~judge~~ election official shall proceed to operate the
22 mechanism to produce the return record in a minimum of three (3) copies,
23 remove the write-in sheet, if any, and record write-in votes on the return
24 record. The write-in sheet shall be attached to the return record and become a
25 part thereof.

26 (3) The return record shall be deemed the official statement of
27 canvass for that machine. One (1) copy of the completed return record for that
28 machine shall be posted upon the wall of the polling room for all to see.

29 (4) In a precinct with one (1) machine, the return record shall
30 constitute the tabulation sheet.

31 (5) In a precinct with more than one (1) machine, the tabulation
32 sheet shall be completed as prescribed in this section, and one (1) return
33 record for each machine shall be attached thereto and become a part of the
34 tabulation sheet.

35 (d) The ~~judges and clerks of~~ election officials shall sign the
36 tabulation blanks or machine return record produced by the device.

1 (e) The counter compartments of the voting machines shall remain open
 2 throughout the time of the making of all statements and certificates.

3 (f) The signing of the ~~poll-precinct voter registration~~ voter registration list and all
 4 the other matters necessary shall be done as provided by law for elections
 5 where voting machines are not used."

6

7 SECTION 21. Arkansas Code Annotated § 7-5-528 is amended to read as
 8 follows:

9 "7-5-528. Proclamation of election results.

10 Upon completion of all tabulation blanks, certificates, and statements,
 11 the ~~judges of~~ election officials shall again proclaim in a loud and audible
 12 voice the results of the election as recorded in that precinct. However, if
 13 the machine is provided with a device for recording candidate and question
 14 counter totals, the return record for each machine shall be posted upon the
 15 wall of the polling room for all to see."

16

17 SECTION 22. Arkansas Code Annotated § 7-5-529(c) is amended to read as
 18 follows:

19 "(c) The keys of the voting machines shall be placed in an envelope
 20 which shall be sealed and signed by all of the ~~judges and clerks of~~ election
 21 officials and any watchers that may desire to affix a signature. One (1) of
 22 the ~~judges of~~ election officials selected for this purpose, accompanied by
 23 those of the other ~~judges and clerks~~ election officials and watchers who so
 24 desire, shall deliver to the county board of election commissioners ~~or the~~
 25 ~~county central committee~~ the envelope containing the keys, obtaining a receipt
 26 for it."

27

28 SECTION 23. Arkansas Code Annotated § 7-5-530 is amended to read as
 29 follows:

30 "7-5-530. Machines released to officials - Impounding upon election
 31 contest or recount.

32 (a) Immediately after the completion of the tabulation of the returns
 33 and the sealing of the machines, the machines shall be released to the proper
 34 officials designated by the county board of election commissioners ~~or the~~
 35 ~~central committee~~.

36 (b) In the event there is an election contest filed, the judge of the

1 court that has jurisdiction may order the county sheriff to impound the
 2 machines alleged in the contest to be in question, and the sheriff shall take
 3 them into his custody and store them in a place under lock and key awaiting
 4 further orders of the court.

5 (c) In the event any candidate in any election in which the machines
 6 have been utilized or any voter who questions the count of any question posed
 7 at any election gives written notice to the county board of election
 8 commissioners ~~or the county central committee~~ that he desires a recount of
 9 certain machines and so designates the machines in his written notice, then
 10 the applicable commission shall designate the sheriff of the county to so
 11 place those questioned machines in his custody and store them in a place to
 12 which only he shall have access awaiting further orders of the applicable
 13 commission or court."

14

15 SECTION 24. Arkansas Code Annotated § 7-5-531 is amended to read as
 16 follows:

17 "7-5-531. Machines to remain sealed until results are certified except
 18 on court order.

19 All voting machines used in any election shall remain locked and sealed
 20 until the election results are ~~duly~~ certified unless the machines are ordered
 21 opened and the seals broken sooner, by and on the authority of an order of a
 22 court of competent jurisdiction, in the event that the issue of the election
 23 should be in judicial controversy. Should no order be entered, it shall be the
 24 duty of the county board of election commissioners ~~or the county committee~~ to
 25 break the seals and open the machines immediately after the results of the
 26 election have been certified."

27

28 SECTION 25. Arkansas Code Annotated § 7-5-602 is repealed.

29 ~~7-5-602. Definitions.~~

30 ~~As used in this subchapter, unless the context otherwise requires:~~

31 ~~(1) "Automatic tabulating equipment" means apparatus necessary to~~
 32 ~~automatically examine and count votes as designated on vote cards and data~~
 33 ~~processing machines which can be used for counting votes and tabulating~~
 34 ~~results, but shall not include those voting machines authorized under this~~
 35 ~~subchapter;~~

36 ~~(2) "Vote card" means a card upon which the voter casts his votes by~~

1 ~~the process of punching;~~

2 ~~—— (3) "Candidate and issue labels" means the cards, paper, booklet,~~
 3 ~~pages, or other material containing the names of offices and candidates and~~
 4 ~~statements of measures to be voted on;~~

5 ~~—— (4) "Counting location" means a location selected by the county~~
 6 ~~committee of each political party with respect to primary elections, and a~~
 7 ~~location selected by the county board of election commissioners with respect~~
 8 ~~to all general or special elections, for the automatic processing or counting,~~
 9 ~~or both, of votes;~~

10 ~~—— (5) "Electronic voting system" means a system of casting votes by use~~
 11 ~~of marking devices and tabulating votes by use of automatic tabulating~~
 12 ~~equipment or data processing equipment, but shall not include those voting~~
 13 ~~machines authorized under this chapter;~~

14 ~~—— (6) "Marking device" means either an apparatus in which vote cards are~~
 15 ~~inserted and used in connection with a punch apparatus for piercing of vote~~
 16 ~~cards by the voter or any approved device for marking a paper vote sheet with~~
 17 ~~ink or other substances which will enable the votes to be tabulated by means~~
 18 ~~of automatic tabulating equipment.~~

19

20 SECTION 26. Arkansas Code Annotated § 7-5-608 is amended to read as
 21 follows:

22 "7-5-608. Sample voting materials.

23 The officials charged with the duty of providing ballots, vote cards, or
 24 candidate and issue labels for any polling ~~place~~ site shall provide therefor
 25 sample ballots, vote cards, or candidate and issue labels which shall be exact
 26 copies of the official ballots, vote cards, and candidate and issue labels
 27 which are caused to be printed by them. These materials shall be arranged in
 28 the form of a diagram showing the print of the marking device as it will
 29 appear after the ballots are arranged therein for voting on election day. The
 30 example materials shall be posted by the ~~judges of election~~ officials in a
 31 conspicuous place in the voting room and shall be there open to public
 32 inspection during the whole of election day."

33

34 SECTION 27. Arkansas Code Annotated § 7-5-611 is amended to read as
 35 follows:

36 "7-5-611. Preparation of equipment - Test - Disposition of voting

1 materials.

2 (a) ~~The county committee of each political party with respect to all~~
3 ~~primary elections, and the~~ county board of election commissioners with respect
4 to all ~~general and special~~ elections, shall cause the marking devices to be
5 put in order, set, adjusted, and made ready for voting when delivered to the
6 election precincts.

7 (b) Before the opening of the polls, ~~the judges and clerks of the~~
8 election officials shall compare the candidate and issue labels used in the
9 marking device with the sample ballots furnished, shall see that the names,
10 numbers, and letters thereon agree, and shall certify thereto on forms
11 provided for this purpose. The certification shall be filed with the election
12 returns.

13 (c)(1) Within five (5) days prior to the election day, ~~the county~~
14 ~~committee of each political party with respect to primary elections, and the~~
15 county board of election commissioners with respect to ~~general and special~~ all
16 elections, shall have the automatic tabulating equipment tested to ascertain
17 that the equipment will correctly count the votes cast for all offices and on
18 all measures.

19 (2) Public notice of the time and place of the test shall be
20 given at least forty-eight (48) hours prior thereto by publication one (1)
21 time in one (1) or more daily or weekly newspapers published in the town,
22 city, or county using the equipment, if a newspaper is published therein.

23 (3) The test shall be open to representatives of the political
24 parties, candidates, the press, and the public.

25 (4) The test shall be conducted by processing a preaudited group
26 of vote cards so punched or marked as to record a predetermined number of
27 valid votes for each candidate and on each measure. The test shall include for
28 each office one (1) or more vote cards which have votes in excess of the
29 number allowed by law in order to test the ability of the automatic tabulating
30 equipment to reject such votes.

31 (5) If any error is detected, the cause shall be ascertained and
32 corrected, and an errorless count shall be made before the automatic
33 tabulating equipment is approved.

34 (d) The test shall be repeated immediately before the start and
35 immediately upon the close of the official count of the votes, in the same
36 manner as set forth above, and may be repeated during the count of votes if

1 the election officials deem it necessary.

2 (e) After completion of the count, the programs used, the vote cards,
 3 and the candidate and issue labels shall be sealed, retained, and disposed of
 4 as provided for paper ballots."

5

6 SECTION 28. Arkansas Code Annotated § 7-5-612 is repealed.

7 ~~7-5-612. Absentee ballots.~~

8 ~~(a) Absentee votes may be cast on paper ballots or ballot cards, or~~
 9 ~~both methods may be used.~~

10 ~~(b) The ballots shall first be counted for write-in votes by the~~
 11 ~~election officers provided in accordance with the law. They may be then either~~
 12 ~~hand counted or automatically counted on the electronic system, whichever is~~
 13 ~~most convenient.~~

14 ~~(c) A true copy of absentee paper ballots may be made on ballot cards~~
 15 ~~which, after being duly verified in the presence of witnesses, shall be~~
 16 ~~counted in the same manner as other ballot cards.~~

17

18 SECTION 29. Arkansas Code Annotated § 7-5-613 is amended to read as
 19 follows:

20 "7-5-613. Counting vote cards and write-in votes.

21 In precincts where an electronic voting system is used, as soon as the
 22 polls are closed:

23 (1) ~~The judges and clerks of~~ election officials shall secure the
 24 marking devices against further voting;

25 (2) They shall thereafter open the vote card box and count the number
 26 of vote cards or envelopes containing vote cards that have been cast to
 27 determine that the number of vote cards does not exceed the number of voters
 28 shown on the list of voters who received vote cards at the polling ~~place~~ site.
 29 If there is an excess, this fact shall be reported in writing to the ~~county~~
 30 ~~committee of the political party or the~~ county board of election
 31 commissioners, ~~as the case may be,~~ with the reasons therefor if known;

32 (3) The total number of voters shall be entered on the tally sheets;

33 (4) ~~The judges and clerks of~~ election officials shall count the
 34 write-in votes and prepare a return of the votes on forms provided for that
 35 purpose;

36 (5) If vote cards are used, all cards on which write-in votes have been

1 recorded shall be numbered serially, starting with the number one (1), and the
2 same number shall be placed on the vote card of the voter;

3 (6) ~~The judges and clerks of~~ election officials shall compare the
4 write-in votes with the votes cast on the vote cards. If the total number of
5 votes for an office exceeds the number allowed by law, then a notation to that
6 effect shall be entered on the back of the vote cards, and if the votes are to
7 be tabulated at a central location they shall be returned to the counting
8 location in an envelope marked defective vote cards. Such invalid votes shall
9 not be counted. So far as applicable, provisions of laws relating to defective
10 paper ballots shall apply to defective vote cards under this subchapter."

11

12 SECTION 30. Arkansas Code Annotated § 7-5-614 is amended to read as
13 follows:

14 "7-5-614. Alternative locations for vote tabulation - Procedures.

15 (a)(1) The tabulation of votes of a precinct in which an electronic
16 voting system as defined in this subchapter is used may be by automatic
17 tabulating equipment at a central counting location or at the polling ~~place~~
18 site.

19 (2) ~~The county committee of each political party with respect to~~
20 ~~primary elections, and the county board of election commissioners with respect~~
21 ~~to general and special~~ all elections, shall give notice of the location within
22 the county of each place at which votes will be counted by electronic voting
23 equipment, and of the names or numbers of all precincts whose votes will be
24 counted at each location, by posting the notice in a conspicuous place in the
25 county courthouse at least three (3) days prior to each election.

26 (b) If the votes are to be tabulated at a central location:

27 (1) ~~The judges and clerks of~~ election officials shall place all
28 vote cards that have been cast in the container provided for the purpose. This
29 container shall be sealed and delivered forthwith by the ~~judges of~~ election
30 officials together with the unused, void and defective vote cards and returns.
31 ~~If both judges cannot accompany the delivery of the container, then at least~~
32 ~~one (1) judge and at least one (1) clerk designated by the judges will~~
33 ~~accompany the container to the counting location or other designated place,~~
34 ~~together with the unused, void, and defective vote cards and returns.~~

35 (2) All proceedings at the counting location shall be ~~under the~~
36 ~~direction of two (2) judges named by the county committee of each political~~

1 ~~party with respect to primary elections and~~ under the direction of at least
 2 two (2) ~~judges~~ election officials named by the county board of election
 3 commissioners with respect to ~~general and special~~ all elections. In ~~general~~
 4 ~~and special~~ all elections, when possible, the election officials shall
 5 represent the majority party and the minority party ~~no more than two (2) of~~
 6 ~~the judges shall be of the same political party.~~

7 (c) If the votes are to be tabulated at the polling ~~place~~ site:

8 (1) The election ~~judges and clerks~~ officials shall proceed to
 9 tabulate, or direct the tabulation thereof, in the same manner and under the
 10 same restrictions as is provided in this section for tabulation by the ~~judges~~
 11 election officials at a central location so far as is practical.

12 (2) All tabulating proceedings shall be under the direction of
 13 the election ~~judges and clerks~~ election officials at the polling ~~place~~ site.

14 (3) The equipment used shall have an element which generates a
 15 printed record at the beginning of its operation which verifies that the
 16 tabulating elements for each candidate position and each question and the
 17 public counter are all set to zero (000), and with an element which generates
 18 a printed record at the finish of its operation of the total number of voters
 19 whose ballots have been tabulated, the total number of votes cast for each
 20 candidate whose name appears on the ballot, and the total number of votes cast
 21 for or against any question appearing on the ballot."

22

23 SECTION 31. Arkansas Code Annotated § 7-5-615 is amended to read as
 24 follows:

25 "7-5-615. Tabulation of votes - Defective vote cards - Certification of
 26 returns.

27 (a) The counting of votes by electronic tabulating equipment shall be
 28 open to the public, and any candidate or his designated representative shall
 29 have the same right to view the counting as is authorized by law for viewing
 30 the counting of paper ballots.

31 (b) No person except those employed and authorized for that purpose
 32 shall touch any vote card, vote card container, or return.

33 (c) The ~~judges~~ election officials at the counting place and all persons
 34 operating the electronic tabulating equipment shall take the same oath
 35 required by law for election ~~judges and clerks~~ officials before entering upon
 36 their duties.

1 (d) If any vote card is damaged or defective so that it cannot properly
 2 be counted by the automatic tabulating equipment, a true duplicate copy shall
 3 be made of the damaged vote card in the presence of tabulation ~~judges~~ election
 4 officials if the votes are tabulated at a central location or in the presence
 5 of or by the election officials at the polling ~~place~~ site if the votes are
 6 tabulated at the polling ~~place~~ site. The duplicate shall be substituted for
 7 the damaged vote card. A duplicate vote card shall be made of a defective vote
 8 card which shall not include the valid votes. All duplicate vote cards shall
 9 be clearly labeled duplicate, shall bear a serial number which shall be
 10 recorded on the damaged or defective vote card, and shall be counted in lieu
 11 of the damaged or defective vote card.

12 (e) The return printed by the automatic tabulating equipment, to which
 13 has been added the return of write-in, early and absentee votes, shall
 14 constitute the official return of each precinct. All returns shall be
 15 certified by the election officials in charge of the tabulation thereof in the
 16 same manner as is provided by law for the certification of election returns of
 17 votes cast by paper ballots.

18 (f) Upon completion of the count, the returns shall be open to the
 19 public."
 20

21 SECTION 32. Arkansas Code Annotated § 7-5-616 is repealed.
 22 ~~7-5-616. Use of ultraviolet ink in lieu of black-out sticker.~~
 23 ~~Any jurisdiction utilizing a system which counts ballots electronically~~
 24 ~~may at their discretion substitute a serial number printed with ultraviolet~~
 25 ~~ink in lieu of the black-out sticker.~~

26
 27 SECTION 33. Arkansas Code Annotated § 7-5-702 is amended to read as
 28 follows:

29 "7-5-702. Preservation of ballots, stubs, and certificates.

30 (a) The county board of election commissioners shall retain the custody
 31 of and safely keep in a sealed container appropriately marked all ballots and
 32 certificates returned to it from the several precincts for a period of ~~ninety~~
 33 ~~(90)~~ twenty (20) days, after which time the ballots and certificates shall be
 34 ~~destroyed~~ stored for a period of two (2) years from the date of the election,
 35 unless the commissioners shall be sooner notified in writing that:

36 (1) The election of some person voted for at the election and

1 declared to have been elected has been contested; or

2 (2) Criminal prosecution has been begun before a tribunal of
 3 competent jurisdiction against any officer of election or person voting
 4 thereat for any fraud in the election.

5 (b) If the commissioners are notified as provided in subsection (a) of
 6 this section then so many of the ballots and certificates as may relate to
 7 matters involved in the contest or any prosecution shall be preserved for use
 8 as evidence in the contest or prosecution.

9 (c) During the time the ballots may be retained or stored, the package
 10 containing them shall not be opened by anyone unless directed to do so by some
 11 competent tribunal before which an election contest or prosecution is pending,
 12 in which the ballots are to be used as evidence.

13 (d) For a period of ~~ninety (90)~~ twenty (20) days, the county treasurer
 14 shall retain the custody of and safely keep all ballot stubs ~~sealed in ballot~~
 15 ~~stub boxes in a sealed container~~ appropriately marked which are delivered to
 16 him from the several precincts, after which time they shall be ~~destroyed~~
 17 stored unless an election contest has been filed or a criminal prosecution has
 18 been initiated in connection with the election.

19 (e) After a period of two (2) years all ballots and ballot stubs may be
 20 destroyed in the following manner:

21 (1) The county board of election commissioners shall enter an
 22 order directing the destruction of ballots and ballot stubs;

23 (2) The county board of election commissioners shall make and
 24 retain a record of ballots and ballot stubs destroyed; and

25 (3) The county board of election commissioners shall file the
 26 order and record pertaining to ballots and ballot stubs destroyed with the
 27 county clerk."

28

29 SECTION 34. Arkansas Code Annotated § 7-5-703(c) is amended to read as
 30 follows:

31 "(c) Should any two (2) or more persons have an equal number of votes,
 32 and a higher number than any other person, the names of the two (2) candidates
 33 receiving the highest number of votes for United States Senator or
 34 Representative shall be certified to a special runoff election which shall be
 35 held ~~two (2)~~ three (3) weeks from the day on which the general election is
 36 held. The special runoff election shall be conducted in the same manner as is

1 now provided by law, and the election results shall be canvassed and certified
 2 in the manner provided by law."

3

4 SECTION 35. Arkansas Code Annotated § 7-5-704(b) is amended to read as
 5 follows:

6 "(b) If two (2) or more persons have an equal number of votes for the
 7 same office and a higher number than any other person, the names of the two
 8 (2) candidates receiving the highest number of votes for any legislative,
 9 judicial, or executive office, except those officers named in Arkansas
 10 Constitution, Article 6, Section 3, and constables, shall be certified to a
 11 special runoff election which shall be held ~~two (2)~~ three (3) weeks from the
 12 day on which the general election is held. The special runoff election shall
 13 be conducted in the same manner as is now provided by law, and the election
 14 results thereof shall be canvassed and certified in the manner provided by
 15 law."

16

17 SECTION 36. Arkansas Code Annotated § 7-5-804 is amended to read as
 18 follows:

19 "7-5-804. Trial - Appeal - Enforcement - Other laws superseded.

20 (a) The election contest shall be tried by the circuit judge in open
 21 court without a jury.

22 (b) An appeal may be taken from the judgment. However, the appeal shall
 23 not operate as a supersedeas by judicial order or otherwise and the judgment
 24 of the circuit court shall, until reversed, be obeyed by officeholders,
 25 political committees and their officers, and all election ~~officers~~ officials.
 26 It shall be the duty of the Supreme Court to advance the hearing of any such
 27 appeal.

28 (c) The circuit court, or, when necessary, the circuit judge in
 29 vacation shall, by mandamus to the officers of political parties and election
 30 ~~officers~~ officials, or both, or the Secretary of State, enforce the proper
 31 certification and proper ballot in accordance with the judgment of the court
 32 and shall punish the failure of any such officers to obey the mandamus by
 33 imprisonment in the county jail.

34 (d) Except as provided in this subchapter, all laws pertaining to
 35 general and special elections or rules of political organizations ~~holding~~
 36 regarding primary elections providing for contest before political conventions

1 or committees, other than the proceedings provided in this subchapter shall be
 2 of no further force or effect."

3

4 SECTION 37. Arkansas Code Annotated § 7-5-810 is amended to read as
 5 follows:

6 "7-5-810. Contest of election results - Time for appeal.

7 An appeal to contest the ~~results~~ determination of any election in any
 8 court of this state must be filed within seven (7) calendar days of the final
 9 certification of the election result as announced by a court as authorized by
 10 this subchapter, except in instances where the Constitution establishes a time
 11 frame for filing an appeal."

12

13 SECTION 38. All provisions of this act of a general and permanent
 14 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
 15 Code Revision Commission shall incorporate the same in the Code.

16

17 SECTION 39. If any provision of this act or the application thereof to
 18 any person or circumstance is held invalid, such invalidity shall not affect
 19 other provisions or applications of the act which can be given effect without
 20 the invalid provision or application, and to this end the provisions of this
 21 act are declared to be severable.

22

23 SECTION 40. All laws and parts of laws in conflict with this act are
 24 hereby repealed.

25

26 APPROVED:3-11-97

27

28

29

30

31

32

33

34

35