

WEST VIRGINIA LEGISLATURE
EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2015



ENROLLED

Senate Bill No. 322

(BY SENATORS NOHE, BOLEY, PALUMBO, LEONHARDT AND TRUMP)

[PASSED MARCH 10, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

E N R O L L E D

Senate Bill No. 322

(BY SENATORS NOHE, BOLEY, PALUMBO, LEONHARDT AND TRUMP)

[Passed March 10, 2015; in effect ninety days from passage.]

AN ACT to amend and reenact §3-4A-28 of the Code of West Virginia, 1931, as amended, relating to removing unnecessary requirement of mandatory electronic recount of ballots in recounts.

Be it enacted by the Legislature of West Virginia:

That §3-4A-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-28. Post-election custody and inspection of vote-recording devices and electronic poll books; canvass and recounts.

1 (a) The vote-recording devices, electronic poll books,
2 tabulating programs and standard validation test ballots are to
3 remain sealed during the canvass of the returns of the election,
4 except that the equipment may be opened for the canvass and
5 must be resealed immediately thereafter. During the seven-day
6 period after the completion of the canvass, any candidate or the
7 local chair of a political party may be permitted to examine any
8 of the sealed materials: *Provided*, That a notice of the time and
9 place of the examination shall be posted at the central counting
10 center before and on the hour of nine o'clock in the morning on
11 the day the examination is to occur and all persons entitled to be
12 present at the central counting center may, at their option, be
13 present. Upon completion of the canvass and after the

14 seven-day period has expired, the vote-recording devices, test
15 results and standard validation test ballots are to be sealed for
16 one year: *Provided, however,* That the vote-recording devices,
17 electronic poll books and all tabulating equipment may be
18 released for use in any other lawful election to be held more
19 than ten days after the canvass is completed and any of the
20 electronic voting equipment or electronic poll books discussed
21 in this section may be released for inspection or review by a
22 request of a circuit court or the Supreme Court of Appeals.

23 (b) In canvassing the returns of the election, the board of
24 canvassers shall examine, as required by subsection (d) of
25 this section, all of the vote-recording devices, electronic poll
26 books, the automatic tabulating equipment used in the
27 election and those voter-verified paper ballots generated by
28 direct recording electronic vote machines, shall determine the
29 number of votes cast for each candidate and for and against
30 each question and, by this examination, shall procure the
31 correct returns and ascertain the true results of the election.
32 Any candidate or his or her party representative may be
33 present at the examination.

34 (c) If any qualified individual demands a recount of the
35 votes cast at an election, the voter-verified paper ballot shall
36 be used according to the same rules that are used in the
37 original vote count pursuant to section twenty-seven of this
38 article. For purposes of this subsection, “qualified
39 individual” means a person who is a candidate for office on
40 the ballot or a voter affected by an issue, other than an
41 individual’s candidacy, on the ballot.

42 (d) During the canvass, at least three percent of the
43 precincts are to be chosen at random and the voter-verified
44 paper ballots are to be counted manually. Whenever the vote
45 total obtained from the manual count of the voter-verified
46 paper ballots for all votes cast in a randomly selected
47 precinct:

48 (1) Differs by more than one percent from the automated
49 vote tabulation equipment; or

50 (2) Results in a different prevailing candidate or outcome,
51 either passage or defeat, of one or more ballot issues in the
52 randomly selected precincts for any contest or ballot issue,
53 then the discrepancies shall immediately be disclosed to the
54 public and all of the voter-verified paper ballots shall be
55 manually counted. In every case where there is a difference
56 between the vote totals obtained from the automated vote
57 tabulation equipment and the corresponding vote totals
58 obtained from the manual count of the voter-verified paper
59 ballots, the manual count of the voter-verified paper ballots
60 is the vote of record.

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

.....
Chairman Senate Committee

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

The within this the

Day of, 2015.

.....
Governor