WEST VIRGINIA LEGISLATURE

EIGHTY-FIRST LEGISLATURE

REGULAR SESSION, 2014

ENROLLED

Senate Bill No. 359

(By Senators Beach, Palumbo, Cann, Cookman, Fitzsimmons, Jenkins, Kirkendoll, Carmichael, Nohe, Walters, Plymale, Stollings and Snyder)

[Passed March 8, 2014; in effect from passage.]

E N R O L L E D

Senate Bill No. 359

(BY SENATORS BEACH, PALUMBO, CANN, COOKMAN, FITZSIMMONS, JENKINS, KIRKENDOLL, CARMICHAEL, NOHE, WALTERS, PLYMALE, STOLLINGS AND SNYDER)

[Passed March 8, 2014; in effect from passage.]

AN ACT to amend and reenact §3-4A-28 of the Code of West Virginia, 1931, as amended, relating to the post-election canvassing of votes involving electronic voting systems; reducing the number of precincts to be chosen at random for a manual count.

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.

(a) The vote-recording devices, electronic poll books, tabulating programs and standard validation test ballots are to remain sealed during the canvass of the returns of the election, except that the equipment may be opened for the canvass and must be resealed immediately thereafter. During

the seven-day period after the completion of the canvass, any candidate or the local chair of a political party may be permitted to examine any of the sealed materials: *Provided,* That a notice of the time and place of the examination shall be posted at the central counting center before and on the hour of nine o'clock in the morning on the day the examination is to occur and all persons entitled to be present at the central counting center may, at their option, be present. Upon completion of the canvass and after the seven-day period has expired, the vote-recording devices, test results and standard validation test ballots are to be sealed for one year: *Provided, however,* That the vote-recording devices, electronic poll books and all tabulating equipment may be released for use in any other lawful election to be held more than ten days after the canvass is completed and any of the electronic voting equipment or electronic poll books discussed in this section may be released for inspection or review by a request of a circuit court or the Supreme Court of Appeals.

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

(c) If any qualified individual demands a recount of the votes cast at an election, the voter-verified paper ballot shall be used according to the same rules that are used in the original vote count pursuant to section twenty-seven of this

article. For purposes of this subsection, "qualified individual" means a person who is a candidate for office on the ballot or a voter affected by an issue, other than an individual's candidacy, on the ballot.

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

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

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

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

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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The within ..... this

the ..... Day of ....., 2014.

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Governor