

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 510**

4 (By Senators Hall, McCabe, Wells, Palumbo and Plymale)

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6 [Originating in the Committee on the Judiciary;

7 reported February 15, 2012.]  
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10 A BILL to amend and reenact §3-4A-28 of the Code of West Virginia,  
11 1931, as amended, relating to amending canvass and recount  
12 procedures by reducing the number of precincts required to be  
13 randomly selected for canvass or recount.

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

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

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

18 **§3-4A-28. Post-election custody and inspection of vote-recording**  
19 **devices and electronic poll books; canvass and**  
20 **recounts.**

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

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

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

1 representative may be present at the examination.

2 (c) If any qualified individual demands a recount of the votes  
3 cast at an election, the voter-verified paper ballot shall be used  
4 according to the same rules that are used in the original vote  
5 count pursuant to section twenty-seven of this article. For  
6 purposes of this subsection, "qualified individual" means a person  
7 who is a candidate for office on the ballot or a voter affected by  
8 an issue, other than an individual's candidacy, on the ballot.

9 (d) During the canvass and any requested recount, at least  
10 ~~five~~ two percent of the precincts, and in no case less than one  
11 precinct, are to be chosen at random and the voter-verified paper  
12 ballots are to be counted manually. Whenever the vote total  
13 obtained from the manual count of the voter-verified paper ballots  
14 for all votes cast in a randomly selected precinct:

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

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

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(NOTE: The purpose of this bill is to change recount procedures.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)