

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 510

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

[Originating in the Committee on the Judiciary;
reported February 15, 2012.]

A BILL to amend and reenact §3-4A-28 of the Code of West Virginia, 1931, as amended, relating to amending canvass and recount procedures by reducing the number of precincts required to be randomly selected for canvass or recount.

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
3 to remain sealed during the canvass of the returns of the
4 election, except that the equipment may be opened for the
5 canvass and must be resealed immediately thereafter. During
6 the seven-day period after the completion of the canvass, any
7 candidate or the local chair of a political party may be
8 permitted to examine any of the sealed materials: *Provided*,
9 That a notice of the time and place of the examination shall
10 be posted at the central counting center before and on the
11 hour of nine o'clock in the morning on the day the examina-
12 tion is to occur and all persons entitled to be present at the
13 central counting center may, at their option, be present.
14 Upon completion of the canvass and after the seven-day
15 period has expired, the vote-recording devices, test results
16 and standard validation test ballots are to be sealed for one
17 year: *Provided, however*, That the vote-recording devices,
18 electronic poll books and all tabulating equipment may be
19 released for use in any other lawful election to be held more
20 than ten days after the canvass is completed and any of the
21 electronic voting equipment or electronic poll books dis-
22 cussed in this section may be released for inspection or

23 review by a request of a circuit court or the Supreme Court
24 of Appeals.

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

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

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

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

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

(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.)

