



1 **ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

2 **§3-5-17. Canvassing and certifying returns; recount procedures.**

3       The commissioners of the county commission, sitting as a board  
4 of canvassers, shall convene at the courthouse of the county on the  
5 fifth day following any primary election, which is not a Saturday,  
6 Sunday or legal holiday, and shall proceed to canvass the returns  
7 of the election. When a majority of the commissioners are not  
8 present, the meeting shall stand adjourned until the next day and  
9 so from day to day, until a quorum is present, or the chief circuit  
10 court judge may appoint a person or persons to the board of  
11 canvassers until such time as a quorum of the county commission is  
12 present: Provided, That at least one member of the board of  
13 canvassers shall be a commissioner of the county commission for  
14 that county. The procedures prescribed in section nine, article  
15 six, of this chapter relating to canvass of general election  
16 returns, shall, where adaptable, be applied in the canvass of the  
17 primary election returns. The board shall proceed to ascertain the  
18 result of the election in the county and district and election  
19 precincts and cause to be prepared and recorded in the primary  
20 election precinct record book a table or tables which show, as to  
21 each candidate of each political party for each office, the number  
22 of votes cast for him or her at each precinct and the total number  
23 cast in the entire county. The board shall then make up and enter  
24 in said record book a certificate for each political party showing,

1 as to each candidate for each political party for each office, the  
2 total number of votes, in words and figures, cast for him or her in  
3 the entire county and the number of votes received by all the  
4 candidates of such party in such district in the following form:

5       The board of canvassers of the county of ..... of  
6 West Virginia, having carefully and impartially examined the  
7 returns of the primary election held in said county on the .....  
8 day of ....., ~~19~~ 20...., do hereby certify that in said  
9 county or district, at said election, on the official ballot of the  
10 ..... party for the office of ....., A. B.  
11 received ..... (.....) votes; C. D. received .....  
12 (.....) votes.

13       And so on for each office for each political party according  
14 to the truth. When the certificates are all entered, the report  
15 shall be signed by the members of the board or by a majority of the  
16 board. Such members shall also sign separate certificates of the  
17 result of the election, within the county, for each of the offices  
18 to be filled by each political party as provided by the following  
19 section.

20       The provisions of article six of this chapter, relating to the  
21 recount of votes in general elections, shall, to the extent  
22 applicable, be operative in primary and other elections conducted  
23 under provisions of this article.

24 **ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.**

1 **§3-6-9. Canvass of returns; declaration of results; recounts;**  
2 **recordkeeping.**

3 (a) The commissioners of the county commission shall be ex  
4 officio a board of canvassers and, as such, shall keep in a  
5 well-bound book, marked "election record", a complete record of all  
6 their proceedings in ascertaining and declaring the results of  
7 every election in their respective counties.

8 (1) They shall convene as the canvassing board at the  
9 courthouse on the fifth day (Sundays excepted) after every election  
10 held in their county, or in any district of the county, and the  
11 officers in whose custody the ballots, pollbooks, registration  
12 records, tally sheets and certificates have been placed shall lay  
13 them before the board for examination.

14 (2) They may, if considered necessary, require the attendance  
15 of any of the commissioners, poll clerks or other persons present  
16 at the election to appear and testify respecting the election and  
17 make other orders as shall seem proper to procure correct returns  
18 and ascertain the true results of the election in their county; but  
19 in this case all the questions to the witnesses and all the answers  
20 to the questions and evidence shall be taken down in writing and  
21 filed and preserved. All orders made shall be entered upon the  
22 record.

23 (3) They may adjourn, from time to time, but no longer than  
24 absolutely necessary.

1           (4) When a majority of the commissioners are not present, the  
2 meeting shall stand adjourned until the next day and so from day to  
3 day, until a quorum is present or the chief circuit court judge may  
4 appoint a person or persons to the board of canvassers until such  
5 time as a quorum of the county commission is present: *Provided,*  
6 That at least one member of the board of canvassers shall be a  
7 commissioner of the county commission for that county.

8           (5) All meetings of the commissioners sitting as a board of  
9 canvassers shall be open to the public.

10          (6) The board shall proceed to open each sealed package of  
11 ballots laid before them and, without unfolding them, count the  
12 number in each package and enter the number upon their record.

13          (7) The ballots shall then be again sealed carefully in a new  
14 envelope and each member of the board shall write his or her name  
15 across the place where the envelope is sealed.

16          (8) After canvassing the returns of the election, the board  
17 shall publicly declare the results of the election.

18          (A) For a candidate on the ballot in entirely one county, the  
19 board shall not enter an order certifying the election results for  
20 a period of forty-eight hours after the declaration. At the end of  
21 the forty-eight hour period, an order shall be entered certifying  
22 all election results except for those offices in which a recount  
23 has been demanded.

24          (B) For a candidate on the ballot in more than one county, the

1 board may not enter an order certifying the election results for a  
2 period of forty-eight hours after the final county's board has  
3 publicly declared the results of the election. In such case, each  
4 relevant board shall notify the Secretary of State immediately  
5 following each relevant board's public declaration of results. For  
6 offices on the ballot in more than one county, the Secretary of  
7 State shall notify the board of each relevant county when the final  
8 county has made a public declaration of the results of the  
9 election. At the end of the forty-eight hour period in this  
10 section, an order shall be entered by each relevant county  
11 certifying all election results except for those offices in which  
12 a recount has been demanded.

13       (b) Within the forty-eight hour period, a candidate on the  
14 ballot in entirely one county may demand the board to open and  
15 examine any of the sealed packages of ballots and recount them.

16       (c) If a candidate is on the ballot in more than one county,  
17 then within the forty eight-hour period after the final county's  
18 board has made a public declaration of the results, such candidate  
19 may demand the board to open and examine any of the sealed packages  
20 of ballots and recount them.

21       (d) After any recount pursuant to either subsection (b) or (c)  
22 of this section the board shall seal the ballots again, along with  
23 the envelope above named, and the clerk of the county commission  
24 and each member of the board shall write his or her name across the

1 places where it is sealed and endorse in ink, on the outside:  
2 "Ballots of the election held at precinct No.\_\_\_\_, in the district  
3 of \_\_\_\_\_, and county of \_\_\_\_\_, on the \_\_\_\_ day of  
4 \_\_\_\_\_."

5 (e) In computing the forty-eight hour period as used in this  
6 section, Saturdays, Sundays and legal holidays shall be excluded.  
7 A candidate on the ballot in more than one county shall not be  
8 precluded from demanding a recount in any county in which the  
9 candidate is on the ballot until the final county in which the  
10 candidate is on the ballot has certified the election results.

11 (f) If a recount has been demanded, the board shall have  
12 forty-eight hours in which to send notice to all candidates who  
13 filed for the office in which a recount has been demanded of the  
14 date, time and place where the board will convene to commence the  
15 recount. The notice shall be served under the provisions of  
16 subsection (g) of this section. The recount shall be set for no  
17 sooner than three days after the serving of the notice: *Provided,*  
18 That after the notice is served, candidates so served shall have an  
19 additional twenty-four hours in which to notify the board, in  
20 writing, of their intention to preserve their right to demand a  
21 recount of precincts not requested to be recounted by the candidate  
22 originally requesting a recount of ballots cast: *Provided,*  
23 *however,* That there shall be only one recount of each precinct,  
24 regardless of the number of requests for a recount of any precinct.

1 A demand for the recount of ballots cast at any precinct may be  
2 made during the recount proceedings only by the candidate  
3 originally requesting the recount and those candidates who notify  
4 the board, pursuant to this subdivision, of their intention to  
5 preserve their right to demand a recount of additional precincts.

6 (g) Any sheriff of the county in which the recount is to occur  
7 shall deliver a copy thereof in writing to the candidate in person;  
8 or if the candidate is not found, by delivering the copy at the  
9 usual place of abode of the candidate and giving information of its  
10 purport, to the spouse of the candidate or any other person found  
11 there who is a member of his or her family and above the age of  
12 sixteen years; or if neither the spouse of the candidate nor any  
13 other person be found there and the candidate is not found, by  
14 leaving the copy posted at the front door of the place of abode.  
15 Any sheriff, thereto required, shall serve a notice within his or  
16 her county and make return of the manner and time of service; for  
17 a failure so to do, he or she shall forfeit \$20. The return shall  
18 be evidence of the manner and time of service.

19 (h) Every candidate who demands a recount shall be required to  
20 furnish bond in a reasonable amount with good sufficient surety to  
21 guarantee payment of the costs and the expenses of the recount in  
22 the event the result of the election is not changed by the recount;  
23 but the amount of the bond shall in no case exceed \$300.

24 (i) After the board of canvassers has made their certificates

1 and declared the results as hereinafter provided, they shall  
2 deposit the sealed packages of ballots, absent voter ballots,  
3 registration records, pollbooks, tally sheets and precinct  
4 certificates with the clerk of the county commission from whom they  
5 were received, who shall carefully preserve them for twenty-two  
6 months: *Provided*, That the clerk may use these records to update  
7 the voter registration records in accordance with subsection (d),  
8 section eighteen, article two of this chapter. If there is no  
9 contest pending as to any election and their further preservation  
10 is not required by any order of a court, the ballots, pollbooks,  
11 tally sheets and certificates shall be destroyed by fire or  
12 otherwise, without opening the sealed packages of ballots. If  
13 there is a contest pending, they shall be destroyed as soon as the  
14 contest is ended.

15 (j) If the result of the election is not changed by the  
16 recount, the costs and expenses of the recount shall be paid by the  
17 party at whose instance the recount was made.

NOTE: The purpose of this bill is to require that a quorum of the board of canvassers be present to canvass the returns of the election. The bill authorizes the chief circuit court judge to appoint a person to the board of canvassers to make a quorum. And, the bill requires that at least one member of the board of canvassers be a commissioner of the county commission for that county.

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

be added.