

WEST VIRGINIA LEGISLATURE
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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

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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.

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
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
12 examination is to occur and all persons entitled to be present
13 at the 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
22 discussed in this section may be released for inspection or
23 review by a request of a circuit court or the Supreme Court of
24 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 the
31 number of votes cast for each candidate and for and against
32 each question and, by this examination, shall procure the
33 correct returns and ascertain the true results of the election.
34 Any candidate or his or her party representative may be
35 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
41 individual” means a person who is a candidate for office on
42 the ballot or a voter affected by an issue, other than an
43 individual’s candidacy, on the ballot.

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

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

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

The within this
the Day of, 2014.

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Governor