

# Senate Bill No. 359

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

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[Introduced January 16, 2014; referred to the  
Committee on the Judiciary.]

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A BILL to amend and reenact §3-4A-28 of the Code of West Virginia, 1931, as amended, relating to amending canvassing process to eliminate hand counting of electronic voting systems.

*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~~ is 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  
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 this~~  
27 ~~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 ~~five 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.~~

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(NOTE: This bill was recommended for introduction and passage by the Joint Committee on the Judiciary. The purpose of this bill is to remove the hand canvassing requirements of electronic voting machines, while leaving intact the recount provisions.

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