# WEST VIRGINIA CODE: §3-4A-29

**§3-4A-29. Incorrect recordation or tabulation of votes; testing accuracy of vote recording devices and automatic tabulating equipment; procedures and requirements.**

(1) When during a canvass or a recount of votes in an election it appears to the board of canvassers or if it is so alleged in a petition for a recount, that a vote recording device or piece of automatic tabulating equipment used in the election has by reason of mechanical failure or improper or fraudulent preparation or tampering, incorrectly recorded or tabulated the actual votes cast or counted on such device or equipment, the board of canvassers shall proceed to determine whether an error has occurred in the vote recorded or counted on such device or equipment. If an error is found, the board of canvassers shall have the cause of the error corrected and the ballots affected recounted so that the election returns will accurately reflect the votes cast at such election if it is possible to accurately correct such error. If the board of canvassers is unable to accurately correct such errors made by said device or equipment and therefore cannot correct the returns to accurately reflect the actual votes cast at such election, the total votes recorded or tabulated on such device or equipment, despite the fact that such vote may be erroneous, shall be accepted in the canvass and in the recount as the votes cast.

(2) If it is necessary for the board of canvassers to test any vote recording device or automatic tabulating equipment counting device for its mechanical accuracy in recording or tabulating the votes cast at such election, such test shall be conducted by the clerk of the county court in the presence of the board of canvassers and of any candidate or his party representative. After the completion of such test the clerk will then and there prepare and file a statement in writing giving in detail the result of the examination and test.

WV Legislature