

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1973

ENROLLED

SENATE BILL NO. 477

(By Mr. BROTHERTON, MR. PRESIDENT)
AND MR. HUBBARD)

PASSED April 11, 1973

In Effect 90 Days from Passage



FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 5/3/73

477

ENROLLED
Senate Bill No. 477

(By Mr. Brotherton, Mr. President, and Mr. Hubbard)

[Passed April 11, 1973; in effect ninety days from passage.]

AN ACT to amend and reenact section nine, article six, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the canvass of election returns; time within which recount must be requested; and preservation and subsequent destruction of records.

Be it enacted by the Legislature of West Virginia:

That section nine, article six, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-9. Canvass of returns; recounts; preservation and subsequent destruction of ballots, records, etc.

1 The commissioners of the county court shall be ex officio
2 a board of canvassers, and, as such, shall keep in a well-
3 bound book, marked "election record," a complete record of
4 all their proceedings in ascertaining and declaring the result
5 of every election in their respective counties. They shall
6 convene as such canvassing board at the courthouse on the
7 fifth day (Sundays excepted) after every election held in
8 their county, or in any district thereof, and the officers
9 in whose custody the ballots, poll books, registration records,
10 tally sheets and certificates have been placed shall lay the
11 same before them for examination. They may, if deemed
12 necessary, require the attendance of any of the commis-
13 sioners, poll clerks or other persons present at the election,
14 to appear and testify respecting the same, and make such
15 other orders as shall seem proper, to procure correct returns
16 and ascertain the true result of the election in their county;
17 but in such case all the questions to the witnesses and all

18 the answers thereto, and evidence, shall be taken down in
19 writing and filed and preserved. All orders made shall be
20 entered upon the record. They may adjourn from time to
21 time, but no longer than absolutely necessary, and, when
22 a majority of the commissioners are not present, their
23 meeting shall stand adjourned until the next day, and so
24 from day to day, until a quorum be present. The board
25 shall proceed to open each sealed package of ballots so
26 laid before them, and, without unfolding them, count the
27 number in each package and enter the same upon their
28 record. The ballots shall then be again sealed up carefully
29 in a new envelope, and each member of the board shall
30 write his name across the place where such envelope is
31 sealed. After canvassing the returns of the election, the
32 board shall publicly declare the results of the election;
33 however, they shall not enter an order certifying such elec-
34 tion results for a period of forty-eight hours after such
35 declaration. Within such forty-eight hour period a candidate
36 voted for at such election may demand the board to open
37 and examine any one or more of the sealed packages of
38 ballots, and recount the same; but in such case they shall
39 seal the same again, along with the envelope above named,
40 and the clerk of the county court and each member of the
41 board shall write his name across the place or places
42 where it is sealed, and endorse in ink, on the outside:
43 "Ballots of the election held at precinct No. ----, in the
44 district of ----, and county of ----, on
45 the ----day of ----." In computing the afore-
46 said forty-eight hour period as hereinbefore used in this
47 section, Saturdays, Sundays and legal holidays shall be
48 excluded: *Provided*, That at the end of the forty-eight
49 hour period, an order shall be entered certifying all elec-
50 tion results except for those offices in which a recount
51 has been demanded. Every candidate who demands such
52 recount shall be required to furnish bond in a reasonable
53 amount with good sufficient surety to guarantee payment
54 of the costs and the expenses of such recount in the event
55 the result of the election be not changed by such recount;
56 but the amount of such bond shall in no case exceed three
57 hundred dollars. When they have made their certificates
58 and declared the results as hereinafter provided, they shall
59 deposit the sealed packages of ballots, absent voter ballots
60 registration records, poll books, tally sheets and precinct

61 certificates with the clerks of the county and circuit courts
62 for whom they were received, who shall carefully preserve
63 the same for sixty days, and if there be no contest pend-
64 ing as to any such election, and their further preserva-
65 tion be not required by any order of a court, such ballots,
66 poll books, tally sheets and certificates shall be destroyed
67 by fire or otherwise, without opening the sealed packages
68 of ballots; and if there be such contest pending, then they
69 shall be so destroyed as soon as the contest is ended:
70 *Provided, however,* That the poll books shall be preserved
71 until such time as the clerk of the county court has com-
72 pleted the duties imposed upon him by section three,
73 article two of this chapter. If the result of the election be
74 not changed by such recount, the costs and expenses there-
75 of shall be paid by the party at whose instance the same
76 was made.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Darrel Darby
Chairman Senate Committee

Clarence C. Christensen
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Harold W. Carson
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

H. J. Booth
President of the Senate

Lewis J. McMane
Speaker House of Delegates

The within approved this the 24th
day of April, 1973.

Arthur A. Massey Jr.
Governor

**PRESENTED TO THE
GOVERNOR**

Date 4/24/73

Time 2:34 p.m.

RECEIVED

MAY 3 9 35 AM '73

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA