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OFFICE OF  
THE SECRETARY OF STATE  
STATE OF WEST VIRGINIA

**WEST VIRGINIA LEGISLATURE**  
**REGULAR SESSION, 1976**

— ● —

**ENROLLED**

*Committee Substitute for*

**HOUSE BILL No. 1147**

(By Mrs. *Spears* & Mrs. *Pitcenberger*)

— ● —

PASSED *March 13,* 1976

In Effect *from* Passage



**FILED IN THE OFFICE**  
**JAMES R. McCARTNEY**  
**SECRETARY OF STATE**

**THIS DATE 3/26/76**

114

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR

**H. B. 1147**

(By MRS. SPEARS and MRS. PITSENBARGER)

(Originating in the House Committee on the Judiciary)

[Passed March 13, 1976; in effect from passage.]

AN ACT to amend and reenact section twenty-six, article four, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nine, article six of said chapter, all relating to elections; candidates who shall be affected by recounts to be notified by personal or substitute service; and providing manner and time for return of service.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 4. VOTING MACHINES.**

**§3-4-26. Post-election custody and inspection of machines; canvass and recounts.**

- 1 (1) The voting machines shall remain locked against voting
- 2 during the canvass of the returns of the election and for a

3 period of seven days after the canvass is finally concluded,  
4 during which time any candidate or the chairman of any coun-  
5 ty executive committee of any political party of their appointed  
6 representatives, shall be permitted to examine the voting  
7 machines under the supervision of the county commission for  
8 the purpose of determining the number of votes cast for any  
9 candidate or for and against any question. After the expira-  
10 tion of the seven-day period as herein provided, the voting  
11 machines may be unlocked by the clerk of the county com-  
12 mission and the registering counters reset at zero (000) unless  
13 the board of canvassers or a court of competent jurisdiction  
14 by appropriate court order directs otherwise.

15 (2) During the period when such machine is required to be  
16 kept locked, the keys thereto shall remain in the possession of  
17 the county commission. After such period, it shall be the duty  
18 of the county commission to return such keys to the clerk of  
19 the county commission.

20 (3) In canvassing the returns of the election, the board of  
21 canvassers shall examine all of the voting machines used in  
22 such election and shall determine the number of votes cast for  
23 each candidate and for and against each question and by such  
24 examination shall procure the correct returns and ascertain the  
25 true results of the election. Any candidate or his party repre-  
26 sentative may be present at such examination.

27 (4) If any candidate shall demand a recount of the votes  
28 cast at an election, the voting machines shall not be re-examin-  
29 ed during such recount for the purpose of reascertaining the  
30 total number of votes registered on the voting machines for  
31 any candidate.

32 The provisions of section nine, article six of this chapter  
33 shall apply where a recount is demanded.

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

##### **§3-6-9. Canvass of returns; public declaration of results; recounts; notice of recount; preservation and subsequent destruc- tion of ballots, records, etc.**

1 The commissioners of the county commission shall be ex  
2 officio a board of canvassers, and, as such, shall keep in a

3 well-bound book, marked "election record," a complete record  
4 of all their proceedings in ascertaining and declaring the re-  
5 sults 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 their  
8 county, or in any district thereof, and the officers in whose  
9 custody the ballots, poll books, registration records, tally  
10 sheets and certificates have been placed shall lay the same be-  
11 fore them for examination. They may, if deemed necessary,  
12 require the attendance of any of the commissioners, poll clerks  
13 or other persons present at the election, to appear and testify  
14 respecting the same, and make such other orders as shall seem  
15 proper, to procure correct returns and ascertain the true results  
16 of the election in their county; but in such case all the ques-  
17 tions to the witnesses and all the answers thereto, and evi-  
18 dence, shall be taken down in writing and filed and preserved.  
19 All orders made shall be entered upon the record. They may  
20 adjourn from time to time, but no longer than absolutely neces-  
21 sary, and, when a majority of the commissioners are not pre-  
22 sent, their meeting shall stand adjourned until the next day,  
23 and so from day to day, until a quorum be present. The board  
24 shall proceed to open each sealed package of ballots so laid  
25 before them, and, without unfolding them, count the number  
26 in each package and enter the same upon their record. The  
27 ballots shall then be again sealed up carefully in a new enve-  
28 lope, and each member of the board shall write his name across  
29 the place where such envelope is sealed. After canvassing the  
30 returns of the election, the board shall publicly declare the  
31 results of the election; however, they shall not enter an order  
32 certifying such election results for a period of forty-eight hours  
33 after such declaration. Within such forty-eight-hour period a  
34 candidate voted for at such election may demand the board  
35 to open and examine any one or more of the sealed packages  
36 of ballots, and recount the same; but in such case they shall  
37 seal the same again, along with the envelope above named,  
38 and the clerk of the county commission and each member of  
39 the board shall write his name across the place or places where  
40 it is sealed, and endorse in ink, on the outside: "Ballots of  
41 the election held at precinct No. \_\_\_\_\_, in the district of  
42 \_\_\_\_\_, and county of \_\_\_\_\_,"

43 on the ..... day of .....” In computing  
44 the aforesaid forty-eight hour period as hereinbefore used in  
45 this section, Saturdays, Sundays and legal holidays shall be  
46 excluded: *Provided*; That at the end of the forty-eight-hour  
47 period, an order shall be entered certifying all election results  
48 except for those offices in which a recount has been demanded.  
49 Every candidate who demands such recount shall be required  
50 to furnish bond in a reasonable amount with good sufficient  
51 surety to guarantee payment of the costs and the expenses of  
52 such recount in the event the result of the election be not  
53 changed by such recount; but the amount of such bond shall  
54 in no case exceed three hundred dollars.

55 In the event a recount has been demanded, the board shall  
56 have an additional twenty-four hours after the end of said  
57 forty-eight hour period, in which to send notice to all candi-  
58 dates who filed for the office in which a recount has been de-  
59 manded, of the date, time and place where the board will con-  
60 vene to commence the recount. Said recount shall be set for no  
61 sooner than three days after the serving of said notice. Service  
62 of process shall occur in the following manner: Any sheriff of  
63 the county in which the recount is to occur, shall deliver a copy  
64 thereof in writing to such candidate in person; or if such candi-  
65 date be not found, by delivering such copy at the usual place  
66 of abode of such candidate, and giving information of its pur-  
67 port, to the spouse of such candidate or any other person found  
68 there who is a member of his family and above the age of six-  
69 teen years; or if neither the spouse of such candidate nor any  
70 such other person be found there, and such candidate be not  
71 found, by leaving such copy posted at the front door of such  
72 place of abode. Any sheriff, thereto required, shall serve a  
73 notice within his county and make return of the manner and  
74 time of service; for a failure so to do, he shall forfeit twenty  
75 dollars. Such return shall be evidence of the manner and time  
76 of service.

77 When they have made their certificates and declared the re-  
78 sults as hereinafter provided, they shall deposit the sealed  
79 packages of ballots, absent voter ballots, registration records,  
80 poll books, tally sheets and precinct certificates with the clerks  
81 of the county commissions and circuit courts for whom they

82 were received, who shall carefully preserve the same for sixty  
83 days, and if there be no contest pending as to any such elec-  
84 tion, and their further preservation be not required by any  
85 order of a court, such ballots, poll books, tally sheets and  
86 certificates shall be destroyed by fire or otherwise, without  
87 opening the sealed packages of ballots; and if there be such  
88 contest pending, then they shall be so destroyed as soon as  
89 the contest is ended: *Provided*, That the poll books shall be  
90 preserved until such time as the clerk of the county commis-  
91 sion has completed the duties imposed upon him by section  
92 three, article two of this chapter. If the result of the election  
93 be not changed by such recount, the costs and expenses there-  
94 of shall be paid by the party at whose instance the same was  
95 made.

Enr. Com. Sub. for H. B. 1147] 6

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

*James L. Davis*  
-----  
Chairman Senate Committee

*Lourence C. Christman*  
-----  
Chairman House Committee

Originated in the House.

Takes effect from passage.

*J. J. Gillan, Jr.*  
-----  
Clerk of the Senate

*V. A. Blankenship*  
-----  
Clerk of the House of Delegates

*W. D. Robertson*  
-----  
President of the Senate

*Lewis R. M. Mearns*  
-----  
Speaker House of Delegates

The within *approved* this the *25th*  
*March*  
day of \_\_\_\_\_, 1976.

*Arthur W. Mearns, Jr.*  
-----  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/19/16

Time 4:40 p.m.