WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976

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ENROLLED
Committee Substitute for
HOUSE BILL No. 1147

(By Mrs. Speers & Mrs. Ritenburger)

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PASSED March 13, 1976

In Effect from Passage

FILED IN THE OFFICE
JAMES R. McCARTNEY
SECRETARY OF STATE
THIS DATE 3/26/76
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 during the canvass of the returns of the election and for a
period of seven days after the canvass is finally concluded, during which time any candidate or the chairman of any county executive committee of any political party of their appointed representatives, shall be permitted to examine the voting machines under the supervision of the county commission for the purpose of determining the number of votes cast for any candidate or for and against any question. After the expiration of the seven-day period as herein provided, the voting machines may be unlocked by the clerk of the county commission and the registering counters reset at zero (000) unless the board of canvassers or a court of competent jurisdiction by appropriate court order directs otherwise.

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

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

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

The provisions of section nine, article six of this chapter 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 destruction of ballots, records, etc.

The commissioners of the county commission shall be ex officio a board of canvassers, and, as such, shall keep in a
well-bound book, marked "election record," a complete record
of all their proceedings in ascertaining and declaring the re-
sults of every election in their respective counties. They shall
convene as such canvassing board at the courthouse on the
fifth day (Sundays excepted) after every election held in their
county, or in any district thereof, and the officers in whose
custody the ballots, poll books, registration records, tally
sheets and certificates have been placed shall lay the same be-
fore them for examination. They may, if deemed necessary,
require the attendance of any of the commissioners, poll clerks
or other persons present at the election, to appear and testify
respecting the same, and make such other orders as shall seem
proper, to procure correct returns and ascertain the true results
of the election in their county; but in such case all the ques-
tions to the witnesses and all the answers thereto, and evi-
dence, shall be taken down in writing and filed and preserved.
All orders made shall be entered upon the record. They may
adjourn from time to time, but no longer than absolutely neces-
sary, and, when a majority of the commissioners are not pre-
sent, their meeting shall stand adjourned until the next day,
and so from day to day, until a quorum be present. The board
shall proceed to open each sealed package of ballots so laid
before them, and, without unfolding them, count the number
in each package and enter the same upon their record. The
ballots shall then be again sealed up carefully in a new enve-
lope, and each member of the board shall write his name across
the place where such envelope is sealed. After canvassing the
returns of the election, the board shall publicly declare the
results of the election; however, they shall not enter an order
certifying such election results for a period of forty-eight hours
after such declaration. Within such forty-eight-hour period a
candidate voted for at such election may demand the board
to open and examine any one or more of the sealed packages
of ballots, and recount the same; but in such case they shall
seal the same again, along with the envelope above named,
and the clerk of the county commission and each member of
the board shall write his name across the place or places where
it is sealed, and endorse in ink, on the outside: "Ballots of
the election held at precinct No. ______, in the district of
____________________, and county of ________________________,

3 [Enr. Com. Sub. for H. B. 1147]
on the __________________________ day of __________________________." In computing the aforesaid forty-eight hour period as hereinbefore used in this section, Saturdays, Sundays and legal holidays shall be excluded: Provided; That at the end of the forty-eight-hour period, an order shall be entered certifying all election results except for those offices in which a recount has been demanded. Every candidate who demands such recount shall be required to furnish bond in a reasonable amount with good sufficient surety to guarantee payment of the costs and the expenses of such recount in the event the result of the election be not changed by such recount; but the amount of such bond shall in no case exceed three hundred dollars.

In the event a recount has been demanded, the board shall have an additional twenty-four hours after the end of said forty-eight hour period, in which to send notice to all candidates who filed for the office in which a recount has been demanded, of the date, time and place where the board will convene to commence the recount. Said recount shall be set for no sooner than three days after the serving of said notice. Service of process shall occur in the following manner: Any sheriff of the county in which the recount is to occur, shall deliver a copy thereof in writing to such candidate in person; or if such candidate be not found, by delivering such copy at the usual place of abode of such candidate, and giving information of its purpose, to the spouse of such candidate or any other person found there who is a member of his family and above the age of sixteen years; or if neither the spouse of such candidate nor any such other person be found there, and such candidate be not found, by leaving such copy posted at the front door of such place of abode. Any sheriff, thereto required, shall serve a notice within his county and make return of the manner and time of service; for a failure so to do, he shall forfeit twenty dollars. Such return shall be evidence of the manner and time of service.

When they have made their certificates and declared the results as hereinafter provided, they shall deposit the sealed packages of ballots, absent voter ballots, registration records, poll books, tally sheets and precinct certificates with the clerks of the county commissions and circuit courts for whom they
were received, who shall carefully preserve the same for sixty
days, and if there be no contest pending as to any such elec-
tion, and their further preservation be not required by any
order of a court, such ballots, poll books, tally sheets and
certificates shall be destroyed by fire or otherwise, without
opening the sealed packages of ballots; and if there be such
contest pending, then they shall be so destroyed as soon as
the contest is ended: Provided, That the poll books shall be
preserved until such time as the clerk of the county commis-
sion has completed the duties imposed upon him by section
three, article two of this chapter. If the result of the election
be not changed by such recount, the costs and expenses there-
of shall be paid by the party at whose instance the same was
made.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee  
Chas. H. Christiana

Chairman House Committee  

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

Governor
PRESENTED TO THE GOVERNOR

Date 3/19/16
Time 4:40 p.m.