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OFFICE OF
THE CLERK OF THE HOUSE OF DELEGATES
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1976

— ● —

ENROLLED

Committee Substitute for

HOUSE BILL No. 1147

(By Mrs. Spears & Mrs. Pitsenberger)

— ● —

PASSED March 13, 1976

In Effect from Passage



FILED IN THE OFFICE
JAMES R. McCARTNEY
SECRETARY OF STATE

THIS DATE 3/26/76

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1147

(By MRS. SPEARS and MRS. PITSENBERGER)

(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 destruction 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.

John C. Sullivan, Jr.
Clerk of the Senate

W. A. Blankenship
Clerk of the House of Delegates

W. D. Bradford
President of the Senate

Lewis F. McMane
Speaker House of Delegates

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

Arthur A. Maass, Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/19/16

Time 4:40 p.m.