WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

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ENROLLED

HOUSE BILL No. 1030

(By Mr. Pritty)

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Passed April 7, 1981

In Effect Ninety Days From Passage
ENROLLED

H. B. 1030

(By Mr. Prunty)

[Passed April 7, 1981; 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 election recounts; requiring open meetings of boards of canvassers; providing that a candidate served with notice of recount by another candidate may demand a recount of precincts not included in the notice of recount.

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; 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 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 results of every election in their respective counties. They shall convene as the 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, pollbooks, registration records, tally sheets
and certificates have been placed shall lay them before the board for examination. They may, if considered 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 this case all the questions to the witnesses and all the answers thereto, and evidence, 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 necessary, and, when a majority of the commissioners are not present, their meeting shall stand adjourned until the next day, and so from day to day, until a quorum is present. All meetings of the commissioners sitting as a board of canvassers shall be open to the public.

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 number upon their record. The ballots shall then be again sealed up carefully in a new envelope, and each member of the board shall write his name across the place where the 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 the election results for a period of forty-eight hours after the declaration.

(a) Within the forty-eight hour period a candidate voted for at the election may demand the board to open and examine any of the sealed packages of ballots, and recount them; but in such case they shall seal the ballots 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 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 ______________, on the _______ day of ______________.” In computing the forty-eight hour period as 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.

(b) If a recount has been demanded, the board shall have an additional twenty-four hours after the end of the 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. The notice shall be served under the provisions of subdivision (c) of this section. The recount shall be set for no sooner than three days after the serving of the notice: Provided, That after the notice is served, candidates so served shall have an additional twenty-four hours in which to notify the board, in writing, of their intention to preserve their right to demand a recount of precincts not requested to be recounted by the candidate originally requesting a recount of ballots cast: Provided, however, That there shall be only one recount of each precinct, regardless of the number of requests for a recount of any precinct. A demand for the recount of ballots cast at any precinct may be made during the recount proceedings only by the candidate originally requesting the recount and those candidates who notify the board, pursuant to this subdivision, of their intention to preserve their right to demand a recount of additional precincts.

(c) Any sheriff of the county in which the recount is to occur shall deliver a copy thereof in writing to the candidate in person; or if the candidate is not found, by delivering the copy at the usual place of abode of the candidate, and giving information of its purport, to the spouse of the 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 the candidate nor any other person be found there, and the candidate is not found, by leaving the copy posted at the front door of the 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. The return shall be evidence of the manner and time of service.
(d) Every candidate who demands a 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 is not changed by the recount; but the amount of the bond shall in no case exceed three hundred dollars.

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

T. P. Bayley
Chairman Senate Committee

Toney E. Whitlow
Chairman House Committee

Originated in the House.
Takes effect ninety days from passage.

Judd C. Wells
Clerk of the Senate

Warren R. McBride
Clerk of the House of Delegates

The within is approved this the 29th day of April, 1981.

John J. Reagan
Governor