

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-24-81

Time _____

70: 1030

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981



ENROLLED

HOUSE BILL No. 1030

(By Mr. Perunty)



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
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
6 shall convene as the 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, pollbooks, registration records, tally sheets

10 and certificates have been placed shall lay them before the
11 board for examination. They may, if considered necessary,
12 require the attendance of any of the commissioners, poll
13 clerks or other persons present at the election, to appear and
14 testify respecting the same, and make such other orders as
15 shall seem proper to procure correct returns and ascertain
16 the true results of the election in their county; but in this
17 case all the questions to the witnesses and all the answers
18 thereto, and evidence, shall be taken down in writing and filed
19 and preserved. All orders made shall be entered upon the
20 record. They may adjourn from time to time, but no longer
21 than absolutely necessary, and, when a majority of the com-
22 missioners are not present, their meeting shall stand ad-
23 journed until the next day, and so from day to day, until
24 a quorum is present. All meetings of the commissioners
25 sitting as a board of canvassers shall be open to the public.
26 The board shall proceed to open each sealed package of
27 ballots so laid before them, and, without unfolding them,
28 count the number in each package and enter the number upon
29 their record. The ballots shall then be again sealed up care-
30 fully in a new envelope, and each member of the board shall
31 write his name across the place where the envelope is sealed.
32 After canvassing the returns of the election, the board shall
33 publicly declare the results of the election; however, they
34 shall not enter an order certifying the election results for
35 a period of forty-eight hours after the declaration.

36 (a) Within the forty-eight hour period a candidate voted
37 for at the election may demand the board to open and examine
38 any of the sealed packages of ballots, and recount them;
39 but in such case they shall seal the ballots again, along with
40 the envelope above named, and the clerk of the county
41 commission and each member of the board shall write his
42 name across the places where it is sealed, and endorse in
43 ink, on the outside: "Ballots of the election held at precinct
44 No., in the district of, and
45 county of, on the day of
46" In computing the forty-eight hour period
47 as used in this section, Saturdays, Sundays and legal holidays
48 shall be excluded: *Provided*, That at the end of the forty-

49 eight-hour period, an order shall be entered certifying all elec-
50 tion results except for those offices in which a recount has been
51 demanded.

52 (b) If a recount has been demanded, the board shall have
53 an additional twenty-four hours after the end of the forty-
54 eight-hour period, in which to send notice to all candidates
55 who filed for the office in which a recount has been demanded,
56 of the date, time and place where the board will convene to
57 commence the recount. The notice shall be served under the
58 provisions of subdivision (c) of this section. The recount shall
59 be set for no sooner than three days after the serving of the
60 notice: *Provided*, That after the notice is served, candidates
61 so served shall have an additional twenty-four hours in which
62 to notify the board, in writing, of their intention to preserve
63 their right to demand a recount of precincts not requested
64 to be recounted by the candidate originally requesting a re-
65 count of ballots cast: *Provided, however*, That there shall
66 be only one recount of each precinct, regardless of the number
67 of requests for a recount of any precinct. A demand for the
68 recount of ballots cast at any precinct may be made during
69 the recount proceedings only by the candidate originally re-
70 questing the recount and those candidates who notify the
71 board, pursuant to this subdivision, of their intention to
72 preserve their right to demand a recount of additional pre-
73 cincts.

74 (c) Any sheriff of the county in which the recount is to
75 occur shall deliver a copy thereof in writing to the candidate
76 in person; or if the candidate is not found, by delivering the
77 copy at the usual place of abode of the candidate, and giving
78 information of its purport, to the spouse of the candidate
79 or any other person found there who is a member of his family
80 and above the age of sixteen years; or if neither the spouse
81 of the candidate nor any other person be found there, and
82 the candidate is not found, by leaving the copy posted at the
83 front door of the place of abode. Any sheriff, thereto required,
84 shall serve a notice within his county and make return of the
85 manner and time of service; for a failure so to do, he shall
86 forfeit twenty dollars. The return shall be evidence of the
87 manner and time of service.

88 (d) Every candidate who demands a recount shall be re-
89 quired to furnish bond in a reasonable amount with good
90 sufficient surety to guarantee payment of the costs and the
91 expenses of such recount in the event the result of the
92 election is not changed by the recount; but the amount of
93 the bond shall in no case exceed three hundred dollars.

94 When they have made their certificates and declared the
95 results as hereinafter provided, they shall deposit the sealed
96 packages of ballots, absent voter ballots, registration records,
97 pollbooks, tally sheets and precinct certificates with the clerks
98 of the county commissions and circuit courts from whom they
99 were received, who shall carefully preserve them for sixty
100 days, and if there is no contest pending as to any election,
101 and their further preservation is not required by any order of
102 a court, the ballots, pollbooks, tally sheets and certificates
103 shall be destroyed by fire or otherwise, without opening the
104 sealed packages of ballots; and if there is a contest pending,
105 then they shall be so destroyed as soon as the contest is ended:
106 *Provided*, That the pollbooks shall be preserved until such
107 time as the clerk of the county commission has completed
108 the duties imposed upon him by section three, article two of
109 this chapter. If the result of the election is not changed by
110 the recount, the costs and expenses thereof shall be paid by
111 the party at whose instance the recount was made.

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

R. P. Bayley

Chairman Senate Committee

Jonny E. Whitlow

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Jodd C. Willis

Clerk of the Senate

W. Blackenship

Clerk of the House of Delegates
Walter R. McInnis

President of the Senate

Hyde G. Lee, Jr.

Speaker House of Delegates

The within is approved this the 24
day of April, 1981.

John D. Roper

Governor

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SECY. OF STATE