WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

ENROLLED

Senate Bill No. 236

(By Senators Kessler, Hunter, Oliverio, Plymale, White and Love)

[Passed March 5, 2008; in effect ninety days from passage.]
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(BY SENATORS KESSLER, HUNTER, OLIVERIO, PLYMALE, WHITE AND LOVE)

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AN ACT to amend and reenact §3-5-15 and §3-5-16 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-6-8 and §3-6-9 of said code, all relating to removing obsolete language relating to the role of circuit clerks in elections.

Be it enacted by the Legislature of West Virginia:

That §3-5-15 and §3-5-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-6-8 and §3-6-9 of said code be amended and reenacted, all to read as follows:
ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-15. Ascertaining and certifying primary election results.

When the polls are closed in an election precinct where only a single election board has served, the receiving board shall perform all of the duties prescribed in this section. When the polls are closed in an election precinct where two election boards have served, both the receiving and counting boards shall together conclude the counting of the votes cast, the tabulating and summarizing of the number of the votes cast, unite in certifying and attesting to the returns of the election and join in making out the certificates of the result of the election provided in this article. They shall not adjourn until the work is completed.

In all election precincts, as soon as the polls are closed and the last voter has voted, the receiving board shall first process the absentee ballots according to the provisions of section eight, article three of this chapter. After the absentee ballots to be counted have been deposited in the ballot box, the election officers shall proceed to ascertain the result of the election in the following manner:

(a) The receiving board shall ascertain from the poll books and record separately on the proper form the total number of voters of each party and nonpartisan voters who have voted.

(1) The number of provisional ballots of each party shall be counted and subtracted from the number of voters of the same party, which result should equal the number of ballots of that party deposited in the ballot box.
(2) The total of all voters, including both partisan and nonpartisan voters, minus the total of all provisional ballots, should equal the number of nonpartisan ballots deposited in the ballot box.

(3) The commissioners and clerks shall also report, over their signatures, the number of each type of ballots spoiled and the number of each type of ballots not voted.

(b) The procedure for counting ballots, whether performed throughout the day by the counting board, as provided in section thirty-three, article one of this chapter, or after the close of the polls by the receiving board or by the two boards together, shall be as follows:

(1) The ballot box shall be opened and all votes shall be tallied in the presence of the entire election board;

(2) One of the commissioners shall take one ballot from the box at a time and shall determine if the ballot is properly signed by the two poll clerks of the receiving board. If not properly signed, the ballot shall be placed in an envelope for the purpose without unfolding it. If properly signed, the commissioner shall announce which type of ballot it is and hand the ballot to a team of commissioners of opposite politics, who shall together read the votes marked on the ballot for each office. Write-in votes for nomination for any office and write-in votes for election for any person other than an official write-in candidate shall be disregarded;

(3) The commissioner responsible for removing the ballots from the box shall keep a tally of the number of ballots of each party and any nonpartisan ballot as they
are removed and whenever the number of ballots of a
particular party shall equal the number of voters
entered on the poll book for that party minus the
number of provisional ballots of that party, as
determined according to subsection (a) of this section,
yany other ballot found in the ballot box shall be placed
in the same envelope with unsigned ballots not counted,
without unfolding the same, or allowing anyone to
examine or know the contents thereof, and the number
of excess ballots of each party shall be recorded on the
envelope;

(4) Each poll clerk shall keep an accurate tally of the
votes cast by marking in ink on tally sheets, which shall
be provided for the purpose so as to show the number of
votes received by each candidate for each office;

(5) When the votes have been read from a ballot, the
ballot shall be immediately strung on a thread, with
separate threads for each party’s ballots and for
nonpartisan ballots.

(c) As soon as the results at the precinct are
ascertained, the commissioners and clerks shall make
out and sign three certificates of result, for each party
represented, of the vote for all candidates of each party
represented, on a form prescribed by the Secretary of
State, giving the complete returns of the election at the
polling place, which form shall include the following
oath:

We, the undersigned commissioners and poll clerks of
the primary election held at precinct No. .......... of
 .......... district of .......... County, W.Va., on the ..........
day of .........., 20..., do hereby certify that having been
first duly sworn, we have carefully and impartially
ascertained the result of said election at said precinct
for the candidates on the official ballot of the ...........
party, and the same is as follows:

The election officers shall enter the name of each
office and the full name of each candidate on the ballot
and the number of votes, in words and numbers, .
received by each. The election officers shall also enter
the full name of every official write-in candidate for
election to offices to be filled in the primary, except
delegate to national convention, and the number of
votes for each. Two of the certificates of result of
election, for each party, shall be sealed in separately
addressed envelopes, furnished for that purpose, and
shall be disposed of by the precinct commissioners as
follows: Two of the sealed envelopes containing the
returns of each party shall be delivered to the clerk of
the county commission who shall, within forty-eight
hours, mail one of the sealed returns for each precinct
by certified mail to the Secretary of State. The one
unsealed certificate shall be posted on the outside of the
front door of the polling place.

(d) All ballots voted for candidates of each party shall
be sealed in separate envelopes and the commissioners
and clerks shall each sign across the seal.

§ 3-5-16. Return of supplies and certificates.

Immediately after completion of the count, tabulation
and the posting of the certificate of result of the
primary election in each precinct, one of the
commissioners or poll clerks of each party at the
precinct, designated for that purpose, shall return to the
clerk of the county commission the ballot boxes, registration books and the several packages of ballots, poll books, tally sheets, certificates and all other election supplies and returns.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-8. Precinct returns; certificates; procedures.

As soon as the results are ascertained, the election officials shall make out and sign, under oath as provided in section fifteen, article five of this chapter, four certificates of result on a form prescribed by the Secretary of State, giving the complete returns of the election at the polling place, including the name of each office and the full name of every candidate on the ballot and the full name of every official write-in candidate for each office and the number of votes, in words and numbers, received by each, and the designation of each issue on the ballot and the number of votes, in words and numbers, for and against the issue.

The certificates shall be sealed and disposed of as provided in section fifteen, article five of this chapter for certificates of result of a primary election.

Immediately after the completion of the tabulation and the posting of the certificate of result of the general election in each precinct, the ballots, registration books, poll books, tally sheets and other election supplies shall be sealed and delivered to the clerk of the county commission as provided in section sixteen, article five of this chapter.

§3-6-9. Canvass of returns; declaration of results; recounts; recordkeeping.
(a) 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 of the county, 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 election and make 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 to the questions 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. When a majority of the commissioners are not present, the 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 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 carefully in a new envelope and each member of the board shall write his or her 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.

(b) Within the 48-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 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 or her 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
48-hour period as used in this section, Saturdays,
Sundays and legal holidays shall be excluded:
Provided, That at the end of the 48-hour period, an
order shall be entered certifying all election results
except for those offices in which a recount has been
demanded.

(c) If a recount has been demanded, the board shall
have an additional twenty-four hours after the end of
the 48-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
subsection (d) 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.

(d) 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 or her 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 or her county and make return of the manner and time of service; for a failure so to do, he or she shall forfeit twenty dollars. The return shall be evidence of the manner and time of service.

(e) 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 the 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.

(f) After the board of canvassers has 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 clerk of the county commission from whom they were received, who shall carefully preserve them for twenty-two months: Provided, That the clerk may use these records to update the voter registration records in accordance with subsection (d), section eighteen, article two of this chapter. 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. If there is a contest pending, they shall be destroyed as soon as the contest is ended.

(g) If the result of the election is not changed by the recount, the costs and expenses of the recount 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.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ........................................ this
the ......................................... Day of ........................................, 2008.

Governor
PRESENTED TO THE GOVERNOR

MAR 17 2008

Time 11:05 AM