

SB 764

FILED

2009 APR 30 PM 4:07

**WEST VIRGINIA LEGISLATURE**  
SECRETARY OF STATE  
**SEVENTY-NINTH LEGISLATURE**  
**REGULAR SESSION, 2009**

—●—  
**ENROLLED**

**Senate Bill No. 764**

(BY SENATORS KESSLER, BROWNING, CHAFIN, FOSTER,  
JENKINS, LAIRD, MINARD, OLIVERIO, PALUMBO,  
SNYDER, STOLLINGS, WILLIAMS, YOST,  
CARUTH, DEEM AND HALL)

[Passed April 8, 2009; in effect from passage.]

FILED

2009 APR 30 PM 4:08

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

ENROLLED

## Senate Bill No. 764

(BY SENATORS KESSLER, BROWNING, CHAFIN, FOSTER,  
JENKINS, LAIRD, MINARD, OLIVERIO, PALUMBO, SNYDER,  
STOLLINGS, WILLIAMS, YOST, CARUTH, DEEM AND HALL)

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[Passed April 8, 2009; in effect from passage.]

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AN ACT to amend and reenact §3-6-9 of the Code of West Virginia, 1931, as amended, relating to election recount procedures; providing that certification of results in multiple county races will not be made final until each county has declared results of election; and requiring Secretary of State notify each county that results have been declared.

*Be it enacted by the Legislature of West Virginia:*

That §3-6-9 of the Code of West Virginia, 1931, as amended, be amended to read as follows:

and reenacted *H. DEEM*  
ARTICLE 6. CANVASS OF RETURNS; DECLARATION OF RESULTS;  
RECORDKEEPING.

**§3-6-9. Canvass of returns; declaration of results; recounts;  
recordkeeping.**

1 (a) The commissioners of the county commission shall be  
2 ex officio a board of canvassers and, as such, shall keep in  
3 a well-bound book, marked "election record", a complete  
4 record of all their proceedings in ascertaining and declar-  
5 ing the results of every election in their respective coun-  
6 ties.

7 (1) They shall convene as the canvassing board at the  
8 courthouse on the fifth day (Sundays excepted) after every  
9 election held in their county, or in any district of the  
10 county, and the officers in whose custody the ballots,  
11 pollbooks, registration records, tally sheets and certifi-  
12 cates have been placed shall lay them before the board for  
13 examination.

14 (2) They may, if considered necessary, require the  
15 attendance of any of the commissioners, poll clerks or  
16 other persons present at the election to appear and testify  
17 respecting the election and make other orders as shall  
18 seem proper to procure correct returns and ascertain the  
19 true results of the election in their county; but in this case  
20 all the questions to the witnesses and all the answers to  
21 the questions and evidence shall be taken down in writing  
22 and filed and preserved. All orders made shall be entered  
23 upon the record.

24 (3) They may adjourn, from time to time, but no longer  
25 than absolutely necessary.

26 (4) When a majority of the commissioners are not  
27 present, the meeting shall stand adjourned until the next  
28 day and so from day to day, until a quorum is present.

29 (5) All meetings of the commissioners sitting as a board  
30 of canvassers shall be open to the public.

31 (6) The board shall proceed to open each sealed package  
32 of ballots laid before them and, without unfolding them,

33 count the number in each package and enter the number  
34 upon their record.

35 (7) The ballots shall then be again sealed carefully in a  
36 new envelope and each member of the board shall write  
37 his or her name across the place where the envelope is  
38 sealed.

39 (8) After canvassing the returns of the election, the board  
40 shall publicly declare the results of the election.

41 (A) For a candidate on the ballot in entirely one county,  
42 the board shall not enter an order certifying the election  
43 results for a period of forty-eight hours after the declara-  
44 tion. At the end of the 48-hour period, an order shall be  
45 entered certifying all election results except for those  
46 offices in which a recount has been demanded.

47 (B) For a candidate on the ballot in more than one  
48 county, the board may not enter an order certifying the  
49 election results for a period of forty-eight hours after the  
50 final county's board has publicly declared the results of  
51 the election. In such case, each relevant board shall notify  
52 the Secretary of State immediately following each relevant  
53 board's public declaration of results. For offices on the  
54 ballot in more than one county, the Secretary of State  
55 shall notify the board of each relevant county when the  
56 final county has made a public declaration of the results  
57 of the election. At the end of the 48-hour period in this  
58 section, an order shall be entered by each relevant county  
59 certifying all election results except for those offices in  
60 which a recount has been demanded.

61 (b) Within the 48-hour period, a candidate on the ballot  
62 in entirely one county may demand the board to open and  
63 examine any of the sealed packages of ballots and recount  
64 them.

65 (c) If a candidate is on the ballot in more than one  
66 county, then within the 48-hour period after the final  
67 county's board has made a public declaration of the  
68 results, such candidate may demand the board to open and  
69 examine any of the sealed packages of ballots and recount  
70 them.

71 (d) After any recount pursuant to either subsection (b) or  
72 (c) of this section the board shall seal the ballots again,  
73 along with the envelope above named, and the clerk of the  
74 county commission and each member of the board shall  
75 write his or her name across the places where it is sealed  
76 and endorse in ink, on the outside: "Ballots of the election  
77 held at precinct No. \_\_\_\_\_, in the district of \_\_\_\_\_,  
78 and county of \_\_\_\_\_, on the \_\_\_\_\_ day of  
79 \_\_\_\_\_."

80 (e) In computing the 48-hour period as used in this  
81 section, Saturdays, Sundays and legal holidays shall be  
82 excluded. A candidate on the ballot in more than one  
83 county shall not be precluded from demanding a recount  
84 in any county in which the candidate is on the ballot until  
85 the final county in which the candidate is on the ballot has  
86 certified the election results.

87 (f) If a recount has been demanded, the board shall have  
88 forty-eight hours in which to send notice to all candidates  
89 who filed for the office in which a recount has been  
90 demanded of the date, time and place where the board will  
91 convene to commence the recount. The notice shall be  
92 served under the provisions of subsection (g) of this  
93 section. The recount shall be set for no sooner than three  
94 days after the serving of the notice: *Provided*, That after  
95 the notice is served, candidates so served shall have an  
96 additional twenty-four hours in which to notify the board,  
97 in writing, of their intention to preserve their right to  
98 demand a recount of precincts not requested to be re-  
99 counted by the candidate originally requesting a recount

100 of ballots cast: *Provided, however,* That there shall be only  
101 one recount of each precinct, regardless of the number of  
102 requests for a recount of any precinct. A demand for the  
103 recount of ballots cast at any precinct may be made during  
104 the recount proceedings only by the candidate originally  
105 requesting the recount and those candidates who notify  
106 the board, pursuant to this subdivision, of their intention  
107 to preserve their right to demand a recount of additional  
108 precincts.

109 (g) Any sheriff of the county in which the recount is to  
110 occur shall deliver a copy thereof in writing to the candi-  
111 date in person; or if the candidate is not found, by deliver-  
112 ing the copy at the usual place of abode of the candidate  
113 and giving information of its purport, to the spouse of the  
114 candidate or any other person found there who is a  
115 member of his or her family and above the age of sixteen  
116 years; or if neither the spouse of the candidate nor any  
117 other person be found there and the candidate is not  
118 found, by leaving the copy posted at the front door of the  
119 place of abode. Any sheriff, thereto required, shall serve  
120 a notice within his or her county and make return of the  
121 manner and time of service; for a failure so to do, he or she  
122 shall forfeit \$20. The return shall be evidence of the  
123 manner and time of service.

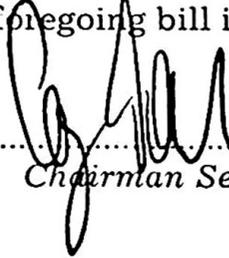
124 (h) Every candidate who demands a recount shall be  
125 required to furnish bond in a reasonable amount with  
126 good sufficient surety to guarantee payment of the costs  
127 and the expenses of the recount in the event the result of  
128 the election is not changed by the recount; but the amount  
129 of the bond shall in no case exceed three hundred dollars.

130 (i) After the board of canvassers has made their certifi-  
131 cates and declared the results as hereinafter provided, they  
132 shall deposit the sealed packages of ballots, absent voter  
133 ballots, registration records, pollbooks, tally sheets and  
134 precinct certificates with the clerk of the county commis-

135 sion from whom they were received, who shall carefully  
136 preserve them for twenty-two months: *Provided*, That the  
137 clerk may use these records to update the voter registra-  
138 tion records in accordance with subsection (d), section  
139 eighteen, article two of this chapter. If there is no contest  
140 pending as to any election and their further preservation  
141 is not required by any order of a court, the ballots,  
142 pollbooks, tally sheets and certificates shall be destroyed  
143 by fire or otherwise, without opening the sealed packages  
144 of ballots. If there is a contest pending, they shall be  
145 destroyed as soon as the contest is ended.

146 (j) If the result of the election is not changed by the  
147 recount, the costs and expenses of the recount shall be  
148 paid by the party at whose instance the recount was made.

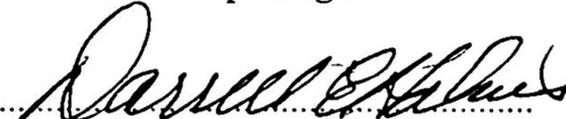
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
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Chairman Senate Committee

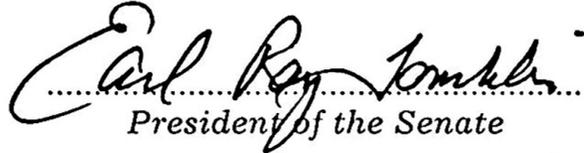
  
.....  
Chairman House Committee

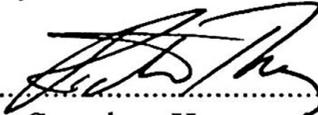
Originated in the Senate.

In effect from passage.

  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved this the 30<sup>th</sup>  
Day of April, 2009.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 27 2009

Time 2:15pm