WEST VIRGINIA LEGISLATURE
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.]
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(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.]

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:

ARTICLE 6. CANVASS OF RETURNS; DECLARATION OF RESULTS; RECORDKEEPING.

§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 declar-
ing the results of every election in their respective coun-
ties.

(1) 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 certifi-
cates have been placed shall lay them before the board for
examination.

(2) 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.

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

(4) 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.

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

(6) 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.

(7) 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.

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

(A) For a candidate on the ballot in entirely one county,
the board shall not enter an order certifying the election
results for a period of forty-eight hours after the decla-
ration. 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.

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

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

(d) After any recount pursuant to either subsection (b) or (c) of this section the board 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 __________.”

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

(f) If a recount has been demanded, the board shall have forty-eight hours 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 (g) 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.

(g) 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 $20. The return shall be evidence of the manner and time of service.

(h) 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.

(i) 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 commis-
sion 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.

(j) 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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within........................................... approved this the 30th Day of April, 2009.

Governor