WEST VIRGINIA LEGISLATURE
EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2015

ENROLLED
Senate Bill No. 322

(By Senators Nohe, Boley, Palumbo, Leonhardt and Trump)

[Passed March 10, 2015; in effect ninety days from passage.]
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(BY SENATORS NOHE, BOLEY, PALUMBO, LEONHARDT AND TRUMP)

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AN ACT to amend and reenact §3-4A-28 of the Code of West Virginia, 1931, as amended, relating to removing unnecessary requirement of mandatory electronic recount of ballots in recounts.

Be it enacted by the Legislature of West Virginia:

That §3-4A-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-28. Post-election custody and inspection of vote-recording devices and electronic poll books; canvass and recounts.

(a) The vote-recording devices, electronic poll books, tabulating programs and standard validation test ballots are to remain sealed during the canvass of the returns of the election, except that the equipment may be opened for the canvass and must be resealed immediately thereafter. During the seven-day period after the completion of the canvass, any candidate or the local chair of a political party may be permitted to examine any of the sealed materials: Provided, That a notice of the time and place of the examination shall be posted at the central counting center before and on the hour of nine o’clock in the morning on the day the examination is to occur and all persons entitled to be present at the central counting center may, at their option, be present. Upon completion of the canvass and after the
seven-day period has expired, the vote-recording devices, test
results and standard validation test ballots are to be sealed for
one year: Provided, however, That the vote-recording devices,
electronic poll books and all tabulating equipment may be
released for use in any other lawful election to be held more
than ten days after the canvass is completed and any of the
electronic voting equipment or electronic poll books discussed
in this section may be released for inspection or review by a
request of a circuit court or the Supreme Court of Appeals.

(b) In canvassing the returns of the election, the board of
canvassers shall examine, as required by subsection (d) of
this section, all of the vote-recording devices, electronic poll
books, the automatic tabulating equipment used in the
election and those voter-verified paper ballots generated by
direct recording electronic vote machines, shall determine the
number of votes cast for each candidate and for and against
each question and, by this examination, shall procure the
correct returns and ascertain the true results of the election.
Any candidate or his or her party representative may be
present at the examination.

(c) If any qualified individual demands a recount of the
votes cast at an election, the voter-verified paper ballot shall
be used according to the same rules that are used in the
original vote count pursuant to section twenty-seven of this
article. For purposes of this subsection, “qualified
individual” means a person who is a candidate for office on
the ballot or a voter affected by an issue, other than an
individual’s candidacy, on the ballot.

(d) During the canvass, at least three percent of the
precincts are to be chosen at random and the voter-verified
paper ballots are to be counted manually. Whenever the vote
total obtained from the manual count of the voter-verified
paper ballots for all votes cast in a randomly selected
precinct:

(1) Differs by more than one percent from the automated
vote tabulation equipment; or
(2) Results in a different prevailing candidate or outcome, either passage or defeat, of one or more ballot issues in the randomly selected precincts for any contest or ballot issue, then the discrepancies shall immediately be disclosed to the public and all of the voter-verified paper ballots shall be manually counted. In every case where there is a difference between the vote totals obtained from the automated vote tabulation equipment and the corresponding vote totals obtained from the manual count of the voter-verified paper ballots, the manual count of the voter-verified paper ballots is the vote of record.
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 of the House of Delegates

The within is approved this the 18th Day of March, 2015.

Governor
PRESENTED TO THE GOVERNOR

MAR 16 2015

Time 10:46 AM