

SB 322

FILED

2015 MAR 18 P 6:56

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-SECOND LEGISLATURE**

OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

**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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[Passed March 10, 2015; in effect ninety days from passage.]

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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.**

1           (a) The vote-recording devices, electronic poll books,  
2 tabulating programs and standard validation test ballots are to  
3 remain sealed during the canvass of the returns of the election,  
4 except that the equipment may be opened for the canvass and  
5 must be resealed immediately thereafter. During the seven-day  
6 period after the completion of the canvass, any candidate or the  
7 local chair of a political party may be permitted to examine any  
8 of the sealed materials: *Provided*, That a notice of the time and  
9 place of the examination shall be posted at the central counting  
10 center before and on the hour of nine o'clock in the morning on  
11 the day the examination is to occur and all persons entitled to be  
12 present at the central counting center may, at their option, be  
13 present. Upon completion of the canvass and after the

14 seven-day period has expired, the vote-recording devices, test  
15 results and standard validation test ballots are to be sealed for  
16 one year: *Provided, however,* That the vote-recording devices,  
17 electronic poll books and all tabulating equipment may be  
18 released for use in any other lawful election to be held more  
19 than ten days after the canvass is completed and any of the  
20 electronic voting equipment or electronic poll books discussed  
21 in this section may be released for inspection or review by a  
22 request of a circuit court or the Supreme Court of Appeals.

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

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

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

48 (1) Differs by more than one percent from the automated  
49 vote tabulation equipment; or

50           (2) Results in a different prevailing candidate or outcome,  
51 either passage or defeat, of one or more ballot issues in the  
52 randomly selected precincts for any contest or ballot issue,  
53 then the discrepancies shall immediately be disclosed to the  
54 public and all of the voter-verified paper ballots shall be  
55 manually counted. In every case where there is a difference  
56 between the vote totals obtained from the automated vote  
57 tabulation equipment and the corresponding vote totals  
58 obtained from the manual count of the voter-verified paper  
59 ballots, the manual count of the voter-verified paper ballots  
60 is the vote of record.

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

*Mark R. Magnanoli*  
.....  
Chairman Senate Committee

*John B. McL*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Clark R. Brown*  
.....  
Clerk of the Senate

*Steph D. Harris*  
.....  
Clerk of the House of Delegates

*William J. Hall*  
.....  
President of the Senate

*Paul W. Ho*  
.....  
Speaker of the House of Delegates

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

*Earl Ray Swisher*  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 16 2015

Time 10:46 AM