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H. B. 3103

(By Delegates Hall, D. Campbell, L. Phillips,
Hatfield, Skaff, Wells, Poore, Brown
and Guthrie)

[Introduced February 11, 2011; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §3-4A-28 of the Code of West Virginia,
1931, as amended, relating to amending recount procedures.

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

1 and on the hour of nine o'clock in the morning on the day the
2 examination is to occur and all persons entitled to be present at
3 the central counting center may, at their option, be present. Upon
4 completion of the canvass and after the seven-day period has
5 expired, the vote-recording devices, test results and standard
6 validation test ballots are to be sealed for one year: *Provided,*
7 *however,* That the vote-recording devices, electronic poll books,
8 and all tabulating equipment may be released for use in any other
9 lawful election to be held more than ten days after the canvass is
10 completed and any of the electronic voting equipment or electronic
11 poll books discussed in this section may be released for inspection
12 or review by a request of a circuit court or the Supreme Court of
13 Appeals.

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

24 (c) If any qualified individual demands a recount of the votes
25 cast at an election, the voter-verified paper ballot shall be used
26 according to the same rules that are used in the original vote

1 count pursuant to section twenty-seven of this article. For
2 purposes of this subsection, "qualified individual" means a person
3 who is a candidate for office on the ballot or a voter affected by
4 an issue, other than an individual's candidacy, on the ballot.

5 (d) During the canvass and any requested recount, at least
6 five percent of the precincts are to be chosen at random and the
7 voter-verified paper ballots ~~are to be counted manually~~ for a
8 single candidate or issue are to be chosen at random for each of
9 the randomly chosen precincts and are to be counted manually, only
10 in cases where there is more than one candidate on the ballot or an
11 issue is present on the ballot. Whenever the vote total obtained
12 from the manual count of the voter-verified paper ballots for all
13 votes cast in a randomly selected precinct:

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

16 (2) Results in a different prevailing candidate or outcome,
17 either passage or defeat, of one or more ballot issues in the
18 randomly selected precincts for any contest or ballot issue, then
19 the discrepancies shall immediately be disclosed to the public and
20 all of the voter-verified paper ballots shall be manually counted.

21 In every case where there is a difference between the vote totals
22 obtained from the automated vote tabulation equipment and the
23 corresponding vote totals obtained from the manual count of the
24 voter-verified paper ballots, the manual count of the
25 voter-verified paper ballots is the vote of record.

NOTE: The purpose of this bill is to change recount procedures.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.