

1 **Senate Bill No. 322**

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

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5 [Introduced January 27, 2015; referred to the Committee on the Judiciary.]
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9 A BILL to amend and reenact §3-4A-28 of the Code of West Virginia, 1931, as amended, relating
10 to removing unnecessary requirement of mandatory electronic recount of ballots in recounts.

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

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

14 **ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

15 **§3-4A-28. Post-election custody and inspection of vote-recording devices and electronic poll**
16 **books; canvass and recounts.**

17 (a) The vote-recording devices, electronic poll books, tabulating programs and standard
18 validation test ballots are to remain sealed during the canvass of the returns of the election, except
19 that the equipment may be opened for the canvass and must be resealed immediately thereafter.
20 During the seven-day period after the completion of the canvass, any candidate or the local chair of
21 a political party may be permitted to examine any of the sealed materials: *Provided*, That a notice

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

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

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

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

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

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

(NOTE: The purpose of this bill is to remove the unnecessary requirement of a mandatory electronic recount of ballots in recounts.

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