

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2876

By Delegate Young

[Introduced January 20, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §3-6-9 of the Code of West Virginia, 1931, as amended, relating to
2 requiring that the boards of canvassers transmit electronically to the Secretary of State, on
3 a form prescribed by the Secretary of State, the total ballots cast, counted, and rejected.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-9. Canvass of returns; declaration of results; recounts; recordkeeping.

1 (a) The commissioners of the county commission shall be ex officio a board of canvassers
2 and, as such, shall keep in a well-bound book, marked "election record", a complete record of all
3 their proceedings in ascertaining and declaring the results of every election in their respective
4 counties.

5 (1) They shall convene as the canvassing board at the courthouse on the fifth day
6 (Sundays excepted) after every election held in their county, or in any district of the county, and the
7 officers in whose custody the ballots, pollbooks, registration records, tally sheets and certificates
8 have been placed shall lay them before the board for examination.

9 (2) They may, if considered necessary, require the attendance of any of the
10 commissioners, poll clerks or other persons present at the election to appear and testify respecting
11 the election and make other orders as shall seem proper to procure correct returns and ascertain
12 the true results of the election in their county; but in this case all the questions to the witnesses and
13 all the answers to the questions and evidence shall be taken down in writing and filed and
14 preserved. All orders made shall be entered upon the record.

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

16 (4) When a majority of the commissioners are not present, the meeting shall stand
17 adjourned until the next day and so from day to day, until a quorum is present.

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

20 (6) The board shall proceed to open each sealed package of ballots laid before them and,

21 without unfolding them, count the number in each package and enter the number upon their
22 record.

23 (7) The ballots shall then be again sealed carefully in a new envelope and each member of
24 the board shall write his or her name across the place where the envelope is sealed.

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

27 (A) For a candidate on the ballot in entirely one county, the board shall may not enter an
28 order certifying the election results for a period of 48 hours after the declaration. At the end of the
29 48-hour period, an order shall be entered certifying all election results except for those offices in
30 which a recount has been demanded.

31 (B) For a candidate on the ballot in more than one county, the board may not enter an order
32 certifying the election results for a period of 48 hours after the final county's board has publicly
33 declared the results of the election. In such case, each relevant board shall notify the Secretary of
34 State immediately following each relevant board's public declaration of results and shall transmit
35 electronically, on a form prescribed by the Secretary of State, the total ballots cast, counted and
36 rejected. For offices on the ballot in more than one county, the Secretary of State shall notify the
37 board of each relevant county when the final county has made a public declaration of the results of
38 the election. At the end of the 48-hour period in this section, an order shall be entered by each
39 relevant county certifying all election results except for those offices in which a recount has been
40 demanded.

41 (b) Within the 48-hour period, a candidate on the ballot in entirely one county may demand
42 the board to open and examine any of the sealed packages of ballots and recount them.

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

46 (d) After any recount pursuant to either subsection (b) or (c) of this section the board shall

47 seal the ballots again, along with the envelope above named, and the clerk of the county
48 commission and each member of the board shall write his or her name across the places where it
49 is sealed and endorse in ink, on the outside: "Ballots of the election held at precinct No.____, in the
50 district of _____, and county of _____, on the ____ day of _____."

51 (e) In computing the 48-hour period as used in this section, Saturdays, Sundays, and legal
52 holidays shall be excluded. A candidate on the ballot in more than one county shall may be
53 precluded from demanding a recount in any county in which the candidate is on the ballot until the
54 final county in which the candidate is on the ballot has certified the election results.

55 (f) If a recount has been demanded, the board shall have 48 hours in which to send notice
56 to all candidates who filed for the office in which a recount has been demanded of the date, time,
57 and place where the board will convene to commence the recount. The notice shall be served
58 under the provisions of subsection (g) of this section. The recount shall be set for no sooner than
59 three days after the serving of the notice: *Provided*, That after the notice is served, candidates so
60 served shall have an additional 24 hours in which to notify the board, in writing, of their intention to
61 preserve their right to demand a recount of precincts not requested to be recounted by the
62 candidate originally requesting a recount of ballots cast: *Provided, however*, That there shall be
63 only one recount of each precinct, regardless of the number of requests for a recount of any
64 precinct. A demand for the recount of ballots cast at any precinct may be made during the recount
65 proceedings only by the candidate originally requesting the recount and those candidates who
66 notify the board, pursuant to this subdivision, of their intention to preserve their right to demand a
67 recount of additional precincts.

68 (g) Any sheriff of the county in which the recount is to occur shall deliver a copy thereof in
69 writing to the candidate in person; or if the candidate is not found, by delivering the copy at the
70 usual place of abode of the candidate and giving information of its purport, to the spouse of the
71 candidate or any other person found there who is a member of his or her family and above the age
72 of sixteen years; or if neither the spouse of the candidate nor any other person be found there and

73 the candidate is not found, by leaving the copy posted at the front door of the place of abode. Any
74 sheriff, thereto required, shall serve a notice within his or her county and make return of the
75 manner and time of service; for a failure so to do, he or she shall forfeit \$20. The return shall be
76 evidence of the manner and time of service.

77 (h) Every candidate who demands a recount shall be required to furnish bond in a
78 reasonable amount with good sufficient surety to guarantee payment of the costs and the
79 expenses of the recount in the event the result of the election is not changed by the recount; but
80 the amount of the bond shall in no case exceed \$300.

81 (i) After the board of canvassers has made their certificates and declared the results as
82 hereinafter provided, they shall deposit the sealed packages of ballots, absent voter ballots,
83 registration records, pollbooks, tally sheets and precinct certificates with the clerk of the county
84 commission from whom they were received, who shall carefully preserve them for twenty-two
85 months: *Provided*, That the clerk may use these records to update the voter registration records in
86 accordance with §3-2-18 (d) of this code. If there is no contest pending as to any election and their
87 further preservation is not required by any order of a court, the ballots, pollbooks, tally sheets and
88 certificates shall be destroyed by fire or otherwise, without opening the sealed packages of ballots.
89 If there is a contest pending, they shall be destroyed as soon as the contest is ended.

90 (j) If the result of the election is not changed by the recount, the costs and expenses of the
91 recount shall be paid by the party at whose instance the recount was made.

NOTE: The purpose of this bill is to require that the boards of canvassers transmit electronically to the Secretary of State, on a form prescribed by the Secretary of State, the total ballots cast, counted, and rejected.

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