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WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

ENROLLED

Senate Bill No. 236

(BY SENATORS KESSLER, HUNTER, OLIVERIO,
PLYMALE, WHITE AND LOVE)

[Passed March 5, 2008; in effect ninety days from passage.]

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AN ACT to amend and reenact §3-5-15 and §3-5-16 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-6-8 and §3-6-9 of said code, all relating to removing obsolete language relating to the role of circuit clerks in elections.

Be it enacted by the Legislature of West Virginia:

That §3-5-15 and §3-5-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-6-8 and §3-6-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**§3-5-15. Ascertaining and certifying primary election results.**

1 When the polls are closed in an election precinct
2 where only a single election board has served, the
3 receiving board shall perform all of the duties
4 prescribed in this section. When the polls are closed in
5 an election precinct where two election boards have
6 served, both the receiving and counting boards shall
7 together conclude the counting of the votes cast, the
8 tabulating and summarizing of the number of the votes
9 cast, unite in certifying and attesting to the returns of
10 the election and join in making out the certificates of
11 the result of the election provided in this article. They
12 shall not adjourn until the work is completed.

13 In all election precincts, as soon as the polls are closed
14 and the last voter has voted, the receiving board shall
15 first process the absentee ballots according to the
16 provisions of section eight, article three of this chapter.
17 After the absentee ballots to be counted have been
18 deposited in the ballot box, the election officers shall
19 proceed to ascertain the result of the election in the
20 following manner:

21 (a) The receiving board shall ascertain from the poll
22 books and record separately on the proper form the
23 total number of voters of each party and nonpartisan
24 voters who have voted.

25 (1) The number of provisional ballots of each party
26 shall be counted and subtracted from the number of
27 voters of the same party, which result should equal the
28 number of ballots of that party deposited in the ballot
29 box.

30 (2) The total of all voters, including both partisan and
31 nonpartisan voters, minus the total of all provisional
32 ballots, should equal the number of nonpartisan ballots
33 deposited in the ballot box.

34 (3) The commissioners and clerks shall also report,
35 over their signatures, the number of each type of ballots
36 spoiled and the number of each type of ballots not
37 voted.

38 (b) The procedure for counting ballots, whether
39 performed throughout the day by the counting board,
40 as provided in section thirty-three, article one of this
41 chapter, or after the close of the polls by the receiving
42 board or by the two boards together, shall be as follows:

43 (1) The ballot box shall be opened and all votes shall
44 be tallied in the presence of the entire election board;

45 (2) One of the commissioners shall take one ballot
46 from the box at a time and shall determine if the ballot
47 is properly signed by the two poll clerks of the receiving
48 board. If not properly signed, the ballot shall be placed
49 in an envelope for the purpose without unfolding it. If
50 properly signed, the commissioner shall announce
51 which type of ballot it is and hand the ballot to a team
52 of commissioners of opposite politics, who shall
53 together read the votes marked on the ballot for each
54 office. Write-in votes for nomination for any office and
55 write-in votes for election for any person other than an
56 official write-in candidate shall be disregarded;

57 (3) The commissioner responsible for removing the
58 ballots from the box shall keep a tally of the number of
59 ballots of each party and any nonpartisan ballot as they

60 are removed and whenever the number of ballots of a
61 particular party shall equal the number of voters
62 entered on the poll book for that party minus the
63 number of provisional ballots of that party, as
64 determined according to subsection (a) of this section,
65 any other ballot found in the ballot box shall be placed
66 in the same envelope with unsigned ballots not counted,
67 without unfolding the same, or allowing anyone to
68 examine or know the contents thereof, and the number
69 of excess ballots of each party shall be recorded on the
70 envelope;

71 (4) Each poll clerk shall keep an accurate tally of the
72 votes cast by marking in ink on tally sheets, which shall
73 be provided for the purpose so as to show the number of
74 votes received by each candidate for each office;

75 (5) When the votes have been read from a ballot, the
76 ballot shall be immediately strung on a thread, with
77 separate threads for each party's ballots and for
78 nonpartisan ballots.

79 (c) As soon as the results at the precinct are
80 ascertained, the commissioners and clerks shall make
81 out and sign three certificates of result, for each party
82 represented, of the vote for all candidates of each party
83 represented, on a form prescribed by the Secretary of
84 State, giving the complete returns of the election at the
85 polling place, which form shall include the following
86 oath:

87 We, the undersigned commissioners and poll clerks of
88 the primary election held at precinct No. of
89 district of County, W.Va., on the
90 day of, 20..., do hereby certify that having been

91 first duly sworn, we have carefully and impartially
92 ascertained the result of said election at said precinct
93 for the candidates on the official ballot of the
94 party, and the same is as follows:

95 The election officers shall enter the name of each
96 office and the full name of each candidate on the ballot
97 and the number of votes, in words and numbers,
98 received by each. The election officers shall also enter
99 the full name of every official write-in candidate for
100 election to offices to be filled in the primary, except
101 delegate to national convention, and the number of
102 votes for each. Two of the certificates of result of
103 election, for each party, shall be sealed in separately
104 addressed envelopes, furnished for that purpose, and
105 shall be disposed of by the precinct commissioners as
106 follows: Two of the sealed envelopes containing the
107 returns of each party shall be delivered to the clerk of
108 the county commission who shall, within forty-eight
109 hours, mail one of the sealed returns for each precinct
110 by certified mail to the Secretary of State. The one
111 unsealed certificate shall be posted on the outside of the
112 front door of the polling place.

113 (d) All ballots voted for candidates of each party shall
114 be sealed in separate envelopes and the commissioners
115 and clerks shall each sign across the seal.

§ 3-5-16. Return of supplies and certificates.

1 Immediately after completion of the count, tabulation
2 and the posting of the certificate of result of the
3 primary election in each precinct, one of the
4 commissioners or poll clerks of each party at the
5 precinct, designated for that purpose, shall return to the

6 clerk of the county commission the ballot boxes,
7 registration books and the several packages of ballots,
8 poll books, tally sheets, certificates and all other
9 election supplies and returns.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-8. Precinct returns; certificates; procedures.

1 As soon as the results are ascertained, the election
2 officials shall make out and sign, under oath as
3 provided in section fifteen, article five of this chapter,
4 four certificates of result on a form prescribed by the
5 Secretary of State, giving the complete returns of the
6 election at the polling place, including the name of each
7 office and the full name of every candidate on the ballot
8 and the full name of every official write-in candidate
9 for each office and the number of votes, in words and
10 numbers, received by each, and the designation of each
11 issue on the ballot and the number of votes, in words
12 and numbers, for and against the issue.

13 The certificates shall be sealed and disposed of as
14 provided in section fifteen, article five of this chapter
15 for certificates of result of a primary election.

16 Immediately after the completion of the tabulation
17 and the posting of the certificate of result of the general
18 election in each precinct, the ballots, registration books,
19 poll books, tally sheets and other election supplies shall
20 be sealed and delivered to the clerk of the county
21 commission as provided in section sixteen, article five
22 of this chapter.

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

1 (a) The commissioners of the county commission shall
2 be ex officio a board of canvassers and, as such, shall
3 keep in a well-bound book, marked "election record",
4 a complete record of all their proceedings in
5 ascertaining and declaring the results of every election
6 in their respective counties. They shall convene as the
7 canvassing board at the courthouse on the fifth day
8 (Sundays excepted) after every election held in their
9 county, or in any district of the county, and the officers
10 in whose custody the ballots, pollbooks, registration
11 records, tally sheets and certificates have been placed
12 shall lay them before the board for examination. They
13 may, if considered necessary, require the attendance of
14 any of the commissioners, poll clerks or other persons
15 present at the election to appear and testify respecting
16 the election and make other orders as shall seem proper
17 to procure correct returns and ascertain the true results
18 of the election in their county; but in this case all the
19 questions to the witnesses and all the answers to the
20 questions and evidence shall be taken down in writing
21 and filed and preserved. All orders made shall be
22 entered upon the record. They may adjourn, from time
23 to time, but no longer than absolutely necessary. When
24 a majority of the commissioners are not present, the
25 meeting shall stand adjourned until the next day and so
26 from day to day, until a quorum is present. All
27 meetings of the commissioners sitting as a board of
28 canvassers shall be open to the public. The board shall
29 proceed to open each sealed package of ballots laid
30 before them and, without unfolding them, count the
31 number in each package and enter the number upon
32 their record. The ballots shall then be again sealed
33 carefully in a new envelope and each member of the
34 board shall write his or her name across the place
35 where the envelope is sealed. After canvassing the

36 returns of the election, the board shall publicly declare
37 the results of the election; however, they shall not enter
38 an order certifying the election results for a period of
39 forty-eight hours after the declaration.

40 (b) Within the 48-hour period, a candidate voted for
41 at the election may demand the board to open and
42 examine any of the sealed packages of ballots and
43 recount them; but they shall seal the ballots again,
44 along with the envelope above named, and the clerk of
45 the county commission and each member of the board
46 shall write his or her name across the places where it is
47 sealed and endorse in ink, on the outside: "Ballots of
48 the election held at precinct No.____, in the district of
49 _____, and county of _____, on the
50 _____ day of _____." In computing the
51 48-hour period as used in this section, Saturdays,
52 Sundays and legal holidays shall be excluded:
53 *Provided*, That at the end of the 48-hour period, an
54 order shall be entered certifying all election results
55 except for those offices in which a recount has been
56 demanded.

57 (c) If a recount has been demanded, the board shall
58 have an additional twenty-four hours after the end of
59 the 48-hour period in which to send notice to all
60 candidates who filed for the office in which a recount
61 has been demanded of the date, time and place where
62 the board will convene to commence the recount. The
63 notice shall be served under the provisions of
64 subsection (d) of this section. The recount shall be set
65 for no sooner than three days after the serving of the
66 notice: *Provided*, That after the notice is served,
67 candidates so served shall have an additional
68 twenty-four hours in which to notify the board, in

69 writing, of their intention to preserve their right to
70 demand a recount of precincts not requested to be
71 recounted by the candidate originally requesting a
72 recount of ballots cast: *Provided, however,* That there
73 shall be only one recount of each precinct, regardless of
74 the number of requests for a recount of any precinct. A
75 demand for the recount of ballots cast at any precinct
76 may be made during the recount proceedings only by
77 the candidate originally requesting the recount and
78 those candidates who notify the board, pursuant to this
79 subdivision, of their intention to preserve their right to
80 demand a recount of additional precincts.

81 (d) Any sheriff of the county in which the recount is to
82 occur shall deliver a copy thereof in writing to the
83 candidate in person; or if the candidate is not found, by
84 delivering the copy at the usual place of abode of the
85 candidate and giving information of its purport, to the
86 spouse of the candidate or any other person found there
87 who is a member of his or her family and above the age
88 of sixteen years; or if neither the spouse of the
89 candidate nor any other person be found there and the
90 candidate is not found, by leaving the copy posted at
91 the front door of the place of abode. Any sheriff,
92 thereto required, shall serve a notice within his or her
93 county and make return of the manner and time of
94 service; for a failure so to do, he or she shall forfeit
95 twenty dollars. The return shall be evidence of the
96 manner and time of service.

97 (e) Every candidate who demands a recount shall be
98 required to furnish bond in a reasonable amount with
99 good sufficient surety to guarantee payment of the costs
100 and the expenses of the recount in the event the result
101 of the election is not changed by the recount; but the

102 amount of the bond shall in no case exceed three
103 hundred dollars.

104 (f) After the board of canvassers has made their
105 certificates and declared the results as hereinafter
106 provided, they shall deposit the sealed packages of
107 ballots, absent voter ballots, registration records,
108 pollbooks, tally sheets and precinct certificates with the
109 clerk of the county commission from whom they were
110 received, who shall carefully preserve them for
111 twenty-two months: *Provided*, That the clerk may use
112 these records to update the voter registration records in
113 accordance with subsection (d), section eighteen, article
114 two of this chapter. If there is no contest pending as to
115 any election and their further preservation is not
116 required by any order of a court, the ballots, pollbooks,
117 tally sheets and certificates shall be destroyed by fire or
118 otherwise, without opening the sealed packages of
119 ballots. If there is a contest pending, they shall be
120 destroyed as soon as the contest is ended.

121 (g) If the result of the election is not changed by the
122 recount, the costs and expenses of the recount shall be
123 paid by the party at whose instance the recount was
124 made.

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

Candy White
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darsel Holmes
.....
Clerk of the Senate

Bryce W. Smith
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this
the *00th* Day of *May*, 2008.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 17 2008

Time 11:05 AM