

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3113

By Delegates Ridenour, Butler, Kimble, Hillenbrand,
Flanigan, Kump, Ward, Phillips, Jennings, Marple,
and Maynor

[Introduced March 04, 2025; referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §3-4A-28 and §3-6-9 of the Code of West Virginia, 1931, as
2 amended, relating to increasing the percentage of precincts to be audited during the
3 election canvass and amending the period of time a candidate is allotted to demand a
4 recount following the declaration of results at the conclusion of the election canvass.

Be it enacted by the Legislature of West Virginia:

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, tabulating programs and standard
2 validation test ballots are to remain sealed during the canvass of the returns of the election, except
3 that the equipment may be opened for the canvass and must be resealed immediately thereafter.
4 During the seven-day period after the completion of the canvass, any candidate or the local chair
5 of a political party may be permitted to examine any of the sealed materials: *Provided*, That a
6 notice of the time and place of the examination shall be posted at the central counting center
7 before and on the hour of ~~nine o'clock in the morning~~ 9:00 a.m. on the day the examination is to
8 occur and all persons entitled to be present at the central counting center may, at their option, be
9 present. Upon completion of the canvass and after the seven-day period has expired, the vote-
10 recording devices, test results and standard validation test ballots are to be sealed for one year:
11 *Provided, however*, That the vote-recording devices, electronic poll books and all tabulating
12 equipment may be released for use in any other lawful election to be held more than 10 days after
13 the canvass is completed and any of the electronic voting equipment or electronic poll books
14 discussed in this section may be released for inspection or review by a request of a circuit court or
15 the Supreme Court of Appeals.

16 (b) In canvassing the returns of the election, the board of canvassers shall examine, as
17 required by subsection (d) of this section, all of the vote-recording devices, electronic poll books,
18 the automatic tabulating equipment used in the election and those voter-verified paper ballots

19 generated by direct recording electronic vote machines, shall determine the number of votes cast
20 for each candidate and for and against each question and, by this examination, shall procure the
21 correct returns and ascertain the true results of the election. Any candidate or his or her party
22 representative may be present at the examination.

23 (c) If any qualified individual demands a recount of the votes cast at an election, the voter-
24 verified paper ballot shall be used according to the same rules that are used in the original vote
25 count pursuant to §3-4A-27 of this code. For purposes of this subsection, "qualified individual"
26 means a person who is a candidate for office on the ballot or a voter affected by an issue, other
27 than an individual's candidacy, on the ballot.

28 (d) During the canvass, at least ~~three~~ 10 percent of the precincts are to be chosen at
29 random and the voter-verified paper ballots are to be counted manually. Whenever the vote total
30 obtained from the manual count of the voter-verified paper ballots for all votes cast in a randomly
31 selected precinct:

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

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

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 not enter an order
28 certifying the election results for a period of ~~forty-eight hours~~ five days after the declaration. At the
29 end of the ~~48-hour~~ five-day period, an order shall be entered certifying all election results except

for those offices in which a recount has been demanded.

(B) For a candidate on the ballot in more than one county, the board may not enter an order certifying the election results for a period of ~~forty-eight hours~~ five days after the final county's board has publicly declared the results of the election. In such case, each relevant board shall notify the Secretary of State immediately following each relevant board's public declaration of results. For offices on the ballot in more than one county, the Secretary of State shall notify the board of each relevant county when the final county has made a public declaration of the results of the election. At the end of the ~~48-hour~~ five-day period in this section, an order shall be entered by each relevant county certifying all election results except for those offices in which a recount has been demanded.

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

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

(d) After any recount pursuant to either subsection (b) or (c) of this section the board shall seal the ballots again, along with the envelope above named, and the clerk of the county commission and each member of the board shall write his or her name across the places where it is sealed and endorse in ink, on the outside: "Ballots of the election held at precinct No.____, in the district of _____, and county of _____, on the ____ day of _____."

(e) In computing the ~~48-hour~~ five-day period as used in this section, Saturdays, Sundays and legal holidays shall be excluded. A candidate on the ballot in more than one county shall not be precluded from demanding a recount in any county in which the candidate is on the ballot until the final county in which the candidate is on the ballot has certified the election results.

(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 16 years; or if neither the spouse of the candidate nor any other person be found there and the
73 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~~ may 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 22 months:
85 *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 increase the number of precincts to be audited by manual hand count to ensure accuracy of the electronically tabulated results and to lengthen the timeframe that candidates have to demand a recount to ensure sufficient time for the manual audit to be conducted and candidate opportunity to ascertain advisability of demanding a recount following the audit.

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