WEST VIRGINIA CODE CHAPTER 3 ARTICLE 1

WV Legislature

§3-1-1. Short title; purpose.

This chapter shall constitute and may be cited as the "West Virginia Election Code" and contemplates and comprehends a code of laws for the establishment, administration and regulation of elections and election procedures in the State of West Virginia.

WV Legislature

§3-1-2. Scope of chapter; definitions.

Unless restricted by the context, the provisions of this chapter shall apply to every general, primary and special election in which candidates are nominated or elected or in which voters pass upon any public question submitted to them, except that the provisions hereof shall be construed to be operative in municipal elections only in those instances in which they are made expressly so applicable.

Unless the context clearly requires a different meaning, as herein used:

"Voter" shall mean any person who possesses the statutory and Constitutional qualifications for voting;

"Election" shall mean the procedure whereby the voters of this state or any subdivision thereof elect persons to fill public offices, or elect members of a Constitutional convention, or vote on public questions;

"Any election" or "all elections" shall include every general, primary, or special election held in this state, or in any of its subdivisions, for the purpose of nominating or electing federal or state officers, or county, city, town or village officers of any subdivision now existing or hereafter created, or for the purpose of electing members of a Constitutional convention, or for voting upon any public question submitted to the people of the state or any of the aforesaid subdivisions;

"Office" shall be construed to mean "public office" which shall include (1) any elective office provided for by the Constitution or laws of the United States or of this state to which a salary or other compensation attaches, and (2) membership in a Constitutional convention;

"Candidate" shall mean any person to be voted for at an election;

"Public question" shall mean any issue or proposition, now or hereafter required by the governing body of this state or any of its subdivisions to be submitted to the voters of the state or subdivision for decision at elections;

The term "minor" as used in article four, section one of the state Constitution and as used in this chapter shall mean a person who has not become eighteen years of age.

WV Legislature

§3-1-2a. Municipal elections.

(a) Notwithstanding other provisions of this code or of any special legislative or home rule city charter, the provisions of: (1) Articles eight and nine of this chapter; (2) any rules promulgated under authority granted in articles eight and nine of this chapter; and (3) any provisions of this chapter making a practice or conduct unlawful shall apply to every municipal election held for any purpose.

(b) For purposes of:

(1) This section;

(2) The application of articles eight and nine of this chapter;

(3) The application of the rules mentioned in this section; and

(4) The application of provisions of this chapter making a practice or conduct unlawful, the provisions of law which impose any duty upon or define any offense or prohibition with respect to the duty or authority of a county officer or county election officer or body of county election officers shall be construed to and shall apply with equal force and effect to the person or persons in a municipal election upon whom this code or the city charter or ordinance imposes such duty or vests the same or similar authority.

(c) Every municipality shall by charter or ordinance designate the persons in the municipality who perform the same duties as any officer in a county election. The designated persons shall attend a biannual election training held and conducted by the office of the Secretary of State.

(d) This section shall not be construed to abrogate the applicability of other provisions of this chapter to municipal elections.

WV Legislature

§3-1-3. Persons entitled to vote.

(a) Citizens of the state may vote at all elections held within the precincts of the counties and municipalities in which they respectively reside, but a person may not vote in a federal, state, county, municipal, or special election unless the person:

(1) Is registered to vote as required by law;

(2) Is 18 years of age, except that a person may vote in a primary election if he or she will reach the age of 18 years on or before the date of the next general election held after the primary election;

(3) Has not been determined by a final judgment of a circuit court exercising jurisdiction pursuant to §44A-1-2(c) of this code to be totally mentally incompetent;

(4) Has not been convicted of treason, a felony, or bribery in an election or, if convicted, has:

(A) Had his or her sentence fully discharged, including any term of incarceration, parole, supervision, or period of probation ordered by any court; or

(B) Been pardoned or otherwise formally released from the resulting disability to vote;

(5) Is a United States citizen; and

(6) Is a bona fide resident of the state, county, or municipality in which he or she offers to vote.

(b) For purposes of §3-1-3 (a)(3), a person is requalified to vote upon certification in writing by the clerk of the circuit court of an order or other official determination filed with his or her office that the person is no longer totally mentally incompetent: *Provided*, That a copy of the order or other official determination shall not be provided without further order by a court of competent jurisdiction or written permission signed by the person to whom the order or official determination pertains.

(c) For purposes of §3-1-3 (a)(4):

(1) A person convicted of a disqualifying crime may not vote from the date of adjudication of that crime, notwithstanding any pending sentencing order, post-trial motions, direct appeals, or other post-conviction requests for relief; and

(2) A person is not considered to have been convicted of a disqualifying crime where the criminal proceedings are deferred and there is no adjudication of guilt as to the disqualifying crime.

WV Legislature

§3-1-3a. Persons entitled to vote under federal Voting Rights Act Amendments of 1970; authority of Secretary of State.

(1) Any citizen of the United States who is a resident of the state and who applies, not later than thirty days immediately prior to any presidential election for registration or qualification to vote for the choice of electors for president and vice-president, or for president and vice-president, in such election, and who is otherwise qualified to vote, may register to vote, and vote, for the choice of electors for president and vice-president, or for president and vice-president, in such election, as provided by the federal Voting Rights Act Amendments of 1970.

(2) Any citizen of the United States who has moved his residence from this state within thirty days next preceding any election for president and vice-president, and who was otherwise qualified to vote in this state as of the date of his change of residence and who has not satisfied the registration requirements of the state to which he has moved, may vote for the choice of electors for president and vice-president, or for president and vice-president, in such election, as provided by the federal Voting Rights Act Amendments of 1970.

(3) Any citizen of the United States who has attained the age of eighteen years but who has not attained the age of twenty-one years by the time of the next ensuing primary or election in which he may vote under section 302 of the federal Voting Rights Act Amendments of 1970, as interpreted and limited by the United States supreme court, and who is otherwise qualified to vote, may vote in any primary or election for those candidates for whom he is entitled to vote under said section 302 of the federal Voting Rights Act Amendments of 1970, as interpreted and limited by the United States supreme court.

(4) The Secretary of State shall have authority to make, amend and rescind such rules, regulations, orders and instructions, and prescribe such registration and voting procedures, forms (including registration, ballot and ballot label forms), lists and records, as may be necessary in order for this state to fully implement, and comply with, the federal Voting Rights Act Amendments of 1970, as interpreted and limited by the United States supreme court, and it shall be the duty of all public officers, election officers, boards and commissioners having any authority or responsibility in connection with any election, to comply with all such rules, regulations, orders and instructions, and use, make, follow or comply with all such registration and voting procedures, forms (including registration, ballot and ballot label forms), lists and records as have been prescribed by the Secretary of State under the foregoing authority vested in that office.

WV Legislature

§3-1-4. Manner of voting.

In all elections the mode of voting shall be by ballot, but the voter shall be left free to vote by either open, sealed, or secret ballot, as he may elect. Voting by ballot may be accomplished as provided in articles three, four, five and six of this chapter.

WV Legislature

§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map.

(a) The precinct is the basic territorial election unit. The county commission shall divide each magisterial district of the county into election precincts, shall number the precincts, shall determine, and establish the boundaries thereof and shall designate one voting place in each precinct, which place shall be established as nearly as possible at the point most convenient for the voters of the precinct. Each magisterial district shall contain at least one voting precinct and each precinct shall have but one voting place therein.

Each precinct within any urban center shall contain not less than 300, nor more than 1,500 registered voters. Each precinct in a rural or less thickly settled area shall contain not less than 200, nor more than 700 registered voters. A county commission may permit the establishment or retention of a precinct less than the minimum numbers allowed in this subsection upon making a written finding that to do otherwise would cause undue hardship to the voters. If, at any time the number of registered voters exceeds the maximum number specified, the county commission shall rearrange the precincts within the political division so that the new precincts each contain a number of registered voters within the designated limits: *Provided*, That any precincts with polling places that are within a one-mile radius of each other on or after July 1, 2014, may be consolidated, at the discretion of the county clerk and county commission into one or more new precincts that contain not more than 3,000 registered voters in any urban center, nor more than 1,500 registered voters in a rural or less thickly settled area: *Provided, however*, That no precincts may be consolidated pursuant to this section if the consolidation would create a geographical barrier or path of travel between voters in a precinct and their proposed new polling place that would create an undue hardship to voters of any current precinct.

If a county commission fails to rearrange the precincts as required, any qualified voter of the county may apply for a writ of mandamus to compel the performance of this duty: *Provided*, That when in the discretion of the county commission, there is only one place convenient to vote within the precinct and when there are more than 700 registered voters within the existing precinct, the county commission may designate two or more precincts with the same geographic boundaries and which have voting places located within the same building. The county commission shall designate alphabetically the voters who are eligible to vote in each precinct so created. Each precinct shall be reported independently.

(b) In order to facilitate the conduct of local and special elections and the use of election registration records therein, precinct boundaries shall be established to coincide with the boundaries of any municipality of the county and with the wards or other geographical districts of the municipality, except in instances where found by the county commission to be wholly impracticable so to do. Governing bodies of all municipalities shall provide accurate and current maps of their boundaries to the clerk of any county commission of a county in which any portion of the municipality is located.

(c) To facilitate the federal and state redistricting process, precinct boundaries shall be

WV Legislature

comprised of intersecting geographic physical features or municipal boundaries recognized by the U. S. Census Bureau. For purposes of this subsection, geographic physical features include streets, roads, streams, creeks, rivers, railroad tracks, and mountain ridge lines. The county commission of every county shall modify precinct boundaries to follow geographic physical features or municipal boundaries recognized by the U.S. Census Bureau and submit changes to the Secretary of State in accordance with this section.

(d) To facilitate the state's receipt of decennial census data from the U.S. Census Bureau which will include tabulation geography that supports the needs of the Legislature during the federal congressional and state legislative redistricting process, and the needs of county commissions during the magisterial district and precinct redistricting process:

(1) The Secretary of State shall serve as the Legislature's agent to the U.S. Census Bureau, the county commissions, and the clerks of the county commissions for purposes of Block Boundary Suggestion Project (Phase I), Voting District Project (Phase II), and Collection of Census Redistricting Plans (Phase IV), or their equivalents, of the U.S. Census Bureau's Redistricting Data Program for the federal decennial census. The Secretary of State may designate and utilize staff within his or her office to perform the technical responsibilities of this role.

(2) Each county commission shall submit on an ongoing basis to the Secretary of State its updated precincts and such other information as is sufficient to participate in the Block Boundary Suggestion Project (Phase I) and Voting District Project (Phase II), or their equivalents, of the Redistricting Data Program, including any verification phases. The Secretary of State shall coordinate with all counties for the submission and verification of such information. The Secretary of State shall compile the information submitted by the counties and shall submit and verify such information to the U.S. Census Bureau in compliance with the deadlines established by the U.S. Census Bureau for the Redistricting Data Program. The Secretary of State shall provide copies of such submission to the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Delegates, and the Minority Leader of the House of Delegates.

(3) Upon the conclusion of any federal congressional or state legislative redistricting process, the Legislature shall provide updated maps and accompanying technical files to the Secretary of State. The Secretary of State shall submit such maps and accompanying technical files to the U.S. Census Bureau during its Collection of Census Redistricting Plans (Phase IV) of the Redistricting Data Program. The Secretary of State shall keep available at all times on its website, and during business hours in its office at the Capitol at a place convenient for public inspection, all current maps and accompanying technical files submitted by the Legislature. The Secretary of State shall maintain previous maps and technical files submitted by the Legislature in its records.

(e) Each county commission shall keep available at all times during business hours in the courthouse at a place convenient for public inspection a map or maps of the county and municipalities with the current boundaries of all precincts and magisterial districts. Each

WV Legislature

county commission shall submit current maps and accompanying technical files to the Secretary of State upon updating its precincts and magisterial districts. The Secretary of State shall keep available at all times on its website, and during business hours in its office at the Capitol at a place convenient for public inspection, all current maps and accompanying technical files submitted by the counties. The Secretary of State shall maintain previous maps and accompanying technical files submitted by the counties in its records.

WV Legislature

§3-1-6. Municipal voting precincts.

The governing bodies of all municipalities shall, for the purpose of municipal elections, provide by ordinance for making the voting precincts in the respective municipalities coincide, as nearly as possible, to the boundaries of the voting precincts fixed by the county court for all state and county elections.

WV Legislature

§3-1-7. Precinct changes; procedure; precinct record.

(a) Subject to the provisions and limitations of section five of this article, the county commission of any county may change the boundaries of any precinct within the county, or divide any precinct into two or more precincts, or consolidate two or more precincts into one, or change the location of any polling place whenever the public convenience may require it.

(b) No order effecting the change, division or consolidation shall be made by the county commission within ninety days prior to an election nor without giving notice at least one month before the change, division or consolidation by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county in which the precinct or precincts are located. The county commission shall also, within fifteen days after the date of the order, publish the order in the manner required for publication of the notice.

(c) The county commission shall also, before the next succeeding election, cause the voters in the several precincts affected by the order to be duly registered in the proper precinct or precincts and shall mail written notification to all registered voters affected by the change.

(d) The county commission shall keep in a well-bound book, marked "election precinct record", a complete record of all their proceedings hereunder and of every order made creating a precinct or precincts or establishing a place of voting therein. The "election precinct record" shall be kept by the county commission clerk in his or her office and shall, at all reasonable hours, when not actually in use by the county commission, be open to inspection by any citizen of the county.

(e) When the county commission establishes a polling place at a location other than the location used for holding the preceding primary, general or special election in that precinct, the commission shall cause a notice to be posted on election day on the door of the previous polling place describing the location of the newly established polling place and shall mail written notification to all registered voters affected by the change.

(f) If for any reason the election cannot be held at the designated polling place in a precinct and no provision has been made by the county commission for holding the election at another place, the commissioners of election for that precinct may hold the election at the nearest place which they can secure for the purpose. They shall make known by proclamation to voters present at the time for opening the polls, and by posting a notice at or near the entrance of the first named polling place, the location at which the election will be held. The county commission shall establish another place of voting for that precinct as soon thereafter as practicable.

(g) Notwithstanding any provision herein to the contrary, in the case of an emergency, the county commission may make the precinct change no later than sixty days prior to an election in accordance with the requirements herein with the approval of the Secretary of

WV Legislature

State. A change, if made however, shall not cause any voter to be moved to a different district.

WV Legislature

§3-1-8. Political party defined; parties or groups that may participate in municipal primary elections.

Any affiliation of voters representing any principle or organization which, at the last preceding general election, polled for its candidate for Governor at least one per cent of the total number of votes cast for all candidates for that office in the state, shall be a political party, within the meaning and for the purpose of this chapter: Provided, That notwithstanding the foregoing provisions of this section, the governing body of any municipality may, by ordinance adopted by the affirmative vote of at least three fourths of the members of such governing body by recorded vote, provide that municipal political parties or groups within such municipality that do not meet the requirements of this section for classification as a political party may participate in the primary elections of any such municipality. Any such ordinance shall contain provisions implementing the foregoing proviso, which implementing provisions shall conform as nearly as practicable to any general provisions of law relating to municipal primary elections.

WV Legislature

§3-1-9. Political party committees; how composed; organization.

(a) Every fourth year at the primary election, the voters of each political party in each state senatorial district shall elect four members consisting of two male members and two female members of the state executive committee of the party. In state senatorial districts containing two or more counties, not more than two elected committee members shall be residents of the same county: *Provided*, That at each election the votes shall be tallied from highest to lowest without regard to gender or county of residence. The two candidates with the highest votes shall be elected first and the other candidates shall be qualified based on vote tallies, gender, and county of residence. Upon completion of the canvass, the clerk of the county commission from each county shall send the results of the election of members of each state executive committee and certificates of announcement, if any, to the Secretary of State. Upon certification of the election results, the Secretary of State shall make known to each state executive committee the members elected to such committee and the vacancies, if any. The committee, when convened and organized as herein provided, shall appoint three additional members of the committee from the state at large which shall constitute the entire voting membership of the state executive committee: *Provided, however*, That if it chooses to do so, the committee may, by motion or resolution and in accordance with party rules, expand the voting membership of the committee. When senatorial districts are realigned following a decennial census, members of the state executive committee previously elected or appointed shall continue in office until the expiration of their terms. Appointments made to fill vacancies on the committee until the next election of executive committee members shall be selected from the previously established districts. At the first election of executive committee members following the realignment of senatorial districts, members shall be elected from the newly established districts.

(b) At the primary election, the voters of each political party in each county shall elect one male and one female member of the party's executive committee of the congressional district, of the state senatorial district and of the delegate district in which the county is situated, if the county is situated in a multicounty state senatorial or delegate district. Upon completion of the canvass, the clerk of the county commission from each county shall send the results of the election of members of each congressional district, state senatorial district and delegate district executive committee of each party to the Secretary of State. Upon certification of the election results, the Secretary of State shall make known to each state executive committee the members elected to each congressional district, state senatorial district and delegate district executive committee and the vacancies, if any. Upon receipt, the state executive committee shall make known any vacancies to the applicable county executive committee for the purpose of filling said vacancies as provided in subsection (f) of this section. When districts are realigned following a decennial census, members of an executive committee previously elected in a county to represent that county in a congressional or multicounty senatorial or delegate district executive committee shall continue to represent that county in the appropriate newly constituted multicounty district until the expiration of their terms: *Provided*, That the county executive committee of the political party shall determine which previously elected members will represent the county if

WV Legislature

the number of multicounty state senatorial or delegate districts in the county is decreased; and shall appoint members to complete the remainder of the term if the number of districts is increased.

(c) At the same time the voters of the county in each magisterial district or executive committee district, as the case may be, shall elect one male and one female member of the party's county executive committee except that in counties having three executive committee districts, there shall be elected two male and two female members of the party's executive committee from each magisterial or executive committee district. Upon completion of the canvass, the clerk of the county commission from each county shall send the results of the election of members of the county executive committee of each party along with the certificates of announcement to the Secretary of State. Upon certification of the election results, the Secretary of State shall make known to each state executive committee the members elected to the county committee and the vacancies, if any. Upon receipt, the state executive committee shall make known any vacancies to the applicable county executive committee for the purpose of filling said vacancies as provided in subsection (f) of this section.

(d) For the purpose of complying with the provisions of this section, the county commission shall create the executive committee districts. The districts shall not be fewer than the number of magisterial districts in the county, nor shall they exceed in number the following: Forty for counties having a population of 100,000 persons or more; 30 for counties having a population of 50,000 to 100,000; 20 for counties having a population of 20,000 to 50,000; and the districts in counties having a population of less than 20,000 persons shall be coextensive with the magisterial districts.

(e) The executive committee districts shall be as nearly equal in population as practicable and shall each be composed of compact, contiguous territory. The county commissions shall change the territorial boundaries of the districts as required by the increase or decrease in the population of the districts as determined by a decennial census. The changes must be made within two years following the census.

(f) All members of executive committees, selected for each political division as herein provided, shall reside within the county or district from which chosen. The term of office of all members of executive committees elected at the primary election in the year 2010 will begin on July 1, following the primary election and continue for four years thereafter, except as provided in subsection (g) of this section. Vacancies in the state executive committee shall be filled by the members of the committee for the unexpired term. Vacancies in the party's executive committee of a congressional district, state senatorial district, delegate district or county shall be filled by the party's executive committee of the county in which the vacancy exists for the unexpired term.

(g) As soon as possible after the certification of the election of the new executive committees, as herein provided, the newly elected executive committee shall convene an organizational meeting within their respective political divisions, on the call of the chair of

WV Legislature

the corresponding outgoing executive committee or by any member of the new executive committee in the event there is no corresponding outgoing executive committee. During the first meeting the new executive committee shall select a chair, a treasurer and a secretary and other officers as they may desire. Each of the officers shall, for their respective committees, perform the duties that usually appertain to his or her office. The organizational meeting may be conducted prior to July 1, but must occur after the certification of the election of the new executive committees. If the organizational meeting is conducted prior to July 1, the new committee shall serve out the remainder of the outgoing committee' s term and is authorized to conduct official business. A current listing of all executive committees' members shall be filed with the Secretary of State by the end of July of each year. Vacancies in any executive committee shall be filled by the appropriate executive committee as provided in subsection (f) of this section no later than 60 days after the vacancy occurs. The chair of each executive committee shall submit an updated committee list to the Secretary of State within 10 days of a change occurring. Executive committee membership lists shall include at least the member's name, full address, employer, telephone number and term information. An appointment to fill a vacancy does not take effect if the executive committee does not submit the updated list to the Secretary of State within the allotted time period. If the executive committee fails to submit the updated list within the allotted time period, it must make another appointment pursuant to the provisions of this section and resubmit the updated list in a timely manner. If a vacancy on an executive committee is not filled within the 60-day period prescribed by this section, the chair of the appropriate executive committee, as provided in subsection (f) of this section, shall name someone to fill the vacancy. If the chair of a county executive committee fails to fill a vacancy in a congressional district, state senatorial district or delegate district executive committee, and the failure to fill such vacancy prohibits said committee from conducting official business, the chair of the party's state executive committee shall fill such vacancy.

(h) Any meeting of any political party executive committee shall be held only after public notice and notice to each member is given according to party rules and shall be open to all members affiliated with the party. Meetings shall be conducted according to party rule and minutes shall be maintained and shall be open to inspection by members affiliated with the party.

WV Legislature

§3-1-10. Party committees in office.

The members of all state, congressional, senatorial, and county executive committees for political parties in office at the time this section becomes effective, and the various officers of such committees, shall hold their several offices and discharge the duties thereof until their successors are chosen and installed in accordance with the provisions of section nine of this article effective simultaneously herewith and other applicable provisions of this article, the prior provisions of section nine having become effective after the election of such members and officers for terms ending in the year 1982. The Legislature finds and declares that the prior provisions of section nine of this article should not operate to limit the terms of such members and officers before the expiration thereof as contemplated by law effective at the time of the primary election held May, 1978.

WV Legislature

§3-1-11. Powers of state executive committee; central or subcommittees; party emblems.

The state executive committee of each party may make such rules for the government of such party, not inconsistent with law, as may be deemed expedient; and it may also revoke, alter, or amend, in any manner not inconsistent with law, any present or future rules of such party. All acts of such state or other committees may be reviewable by the courts.

Any party executive committee may create and appoint subcommittees, campaign, or central committees, and delegate to them such powers and authority in the executive and administrative work of the committee as they shall deem advisable; but no power or authority shall be delegated to such subcommittee, campaign committee, or central committee, in contravention of any law of the state.

The state executive committee shall adopt a party emblem or device for the party to distinguish and identify the party ticket, and shall certify the same to the ballot commissioners, and it shall be printed on the party ticket. The device or emblem of no two parties shall be similar or of such a nature as to mislead or confuse the voter. If two or more parties seek the same device, or similar devices, preference shall be given to the party polling the largest number of votes for the candidate for Governor at the last election for such office.

WV Legislature

§3-1-12. Members of national party committee.

The members of the national party executive committee of any political party, to which the state is entitled under the national organization and the rules and regulations of the national committee of the party, shall be elected by the state executive committee of such party, unless the rules of the national party otherwise provide, in which latter event they shall be selected in all respects as provided for the selection thereof by the rules and regulations of the national organization of the political party and the resolutions of the delegated representatives of the political party passed and adopted by any national convention of such political party. A vacancy in the membership of a national party executive committee shall be filled by the state committee of the party unless the rules of the national party otherwise provide.

WV Legislature

§3-1-13. Other party or group committees.

The members of any political party which, at the last preceding general election, polled, for its candidate for Governor, fewer than ten per cent of the total number of votes cast for all candidates for that office in the state, and groups of citizens, not constituting a political party, which nominate candidates for offices to be voted for at any election, may select members of committees and officers thereof, for such political parties and such groups of citizens, in such manner as they may devise and adopt.

WV Legislature

§3-1-14. Presidential electors; how chosen; duties; vacancies; compensation.

Electors of president and vice president of the United States shall be nominated as provided in section twenty-one of article five of this chapter but their names shall be omitted from the general election ballot, as provided in section two of article six of this chapter, to be voted on the Tuesday next after the first Monday in November 1964, and every fourth year thereafter.

The presidential electors shall meet in the office of the Governor at the capital of this state, on the day now appointed, or which shall hereafter be appointed, by the Congress of the United States and vote for the president and for the vice president of the United States in the manner prescribed by the Constitution and the laws of the United States. If any of the electors so chosen fail to attend at the time appointed, the electors present shall appoint an elector in place of each one so failing to attend, and every elector so appointed shall be entitled to vote in the same manner as if he had been originally chosen by the people.

Each presidential elector shall receive as compensation the sum of $10 a day for attending such meeting, including the time spent in traveling to and from the place of meeting and in addition thereto the sum of 10¢ for every mile necessarily traveled in going to and returning from the place of meeting, by the most direct route.

WV Legislature

§3-1-15. Election of United States senators and congressmen.

At the general election in the year nineteen hundred and sixty-four and at each general election in every sixth year thereafter, and at the general election in the year nineteen hundred and sixty-six, and in each sixth year thereafter, there shall be elected a member of the United States Senate, and at the general election in the year nineteen hundred and sixty-four, and in every second year thereafter, there shall be elected a member of the House of Representatives in the Congress of the United States for each congressional district of the state, each for the next ensuing term.

WV Legislature

§3-1-16. Election of state officers.

(a) At the general election to be held in 1968, and every fourth year thereafter, there shall be elected a Governor, Secretary of State, Treasurer, Auditor, Attorney General and Commissioner of Agriculture. At the general election in 1968, and every second year thereafter, there shall be elected a member of the State Senate for each senatorial district, and a member or members of the House of Delegates of the state from each county or each delegate district.

(b) At the time of the primary election to be held in the year 2016, and every twelfth year thereafter, there shall be elected one justice of the Supreme Court of Appeals, and at the time of the primary election to be held in 2020, and every 12th year thereafter, two justices of the Supreme Court of Appeals and at the time of the primary election to be held in 2024, and every twelfth year thereafter, two justices of the Supreme Court of Appeals. Effective with the primary election held in the year 2016, the election of justices of the Supreme Court of Appeals shall be on a nonpartisan basis and by division as set forth more fully in article five of this chapter.

(c) At the time of the primary election to be held in the year 2024, and every tenth year thereafter, there shall be elected one judge to a seat of the Intermediate Court of Appeals; at the time of the primary election to be held in 2026, and every 10th year thereafter, one judge to a seat of the Intermediate Court of Appeals; and at the time of the primary election to be held in 2028, and every 10th year thereafter, one judge to a seat of the Intermediate Court of Appeals. Effective with the primary election held in the year 2024, the election of Judges of the Intermediate Court of Appeals shall be on a nonpartisan basis and by division as set forth more fully in §3-5-1 *et seq*. of this code.

WV Legislature

§3-1-17. Election of circuit judges; county and district officers; magistrates.

(a) There shall be elected, at the time of the primary election to be held in 2016, and every eighth year thereafter, one judge of the circuit court of every judicial circuit entitled to one judge, and one judge for each numbered division of the judicial circuit in those judicial circuits entitled to two or more circuit judges; and at the time of the primary election to be held in 2016, and in every fourth year thereafter, the number of magistrates prescribed by law for the county. Beginning with the election held in the year 2016, an election for the purpose of electing judges of the circuit court, or an election for the purpose of electing magistrates, shall be upon a nonpartisan ballot printed for the purpose.

(b) There shall be elected, at the general election to be held in 1992, and every fourth year thereafter, a sheriff, prosecuting attorney, surveyor of lands, and the number of assessors prescribed by law for the county; and at the general election to be held in 1990, and every second year thereafter, a commissioner of the county commission for each county; and at the general election to be held in 1992, and every sixth year thereafter, a clerk of the county commission and a clerk of the circuit court for each county.

(c) Effective with the primary election of 2016, all elections for judge of the circuit courts in the respective circuits and magistrates in each county will be elected on a nonpartisan basis and by division as set forth more fully in article five of this chapter.

(d) Beginning with the judicial election in 2024, and in every judicial election thereafter, if no candidate in a division for judge of a circuit court receives more than 30 percent of the votes cast in the election, there shall be a runoff election at the subsequent general election between the two candidates who received the highest and next-highest number of votes cast in that division.

WV Legislature

§3-1-18. Election to fill other offices.

If the Legislature shall hereafter create any elective office, or make any office now filled by appointment an elective office, in the state or in any subdivision thereof, the person to fill the same shall be elected at the general election last preceding the beginning of the term of such office.

The provisions of this section shall not apply to the office of member or to the election of members of a Constitutional convention.

WV Legislature

§3-1-19. Ballot commissioners; selection; duties generally; vacancies.

(a) In each county in the state, the Board of Ballot Commissioners shall be comprised of:

(1) The clerk of the county commission while holding office; and

(2) Two other persons as follows:

(A) One person appointed by the county executive committee of the political party that cast the largest number of votes in the state at the last preceding general election; and

(B) One person appointed by the county executive committee of the political party that cast the second largest number of votes in the state at the last preceding general election.

(b) If the county executive committees do not make the appointments in a timely manner, then the county clerk shall make the appointments.

(c) The county clerk shall serve as chairman.

(d) The county clerk shall notify the chairman of the respective county executive committees of the two parties, at least five days before the time of the making of the appointments.

(e) If at any time after notice is given, and before or on the day so fixed for making appointments, the chairman of each of the committees shall designate, in writing, a member of his or her party as ballot commissioner. Each designee shall be appointed if he or she meets the qualifications of a voter: Provided, That a ballot commissioner cannot be a candidate for any office in any election held during the time he or she is serving as ballot commissioner, other than state, county, or district executive committee or delegate to the national convention of a political party.

(f) Ballot commissioners shall be appointed between January 15 and January 30, in each year in which a general election is to be held, for a term of two years beginning on February 1 next ensuing.

(g) The ballot commissioners shall perform their duties at all general, special, and primary elections held in the county or any magisterial district thereof during their term of office.

(h) A vacancy shall be filled in the same manner as an original appointment, but immediate notice of a vacancy shall, where necessary, be deemed in compliance with the five-day notice provision.

WV Legislature

§3-1-20. Cards of instructions to voters; sample ballots; posting.

(a) The board of ballot commissioners of each county shall provide cards of general information which will include:

(1) The date of the election and the hours during which polling places will be open;

(2) Instruction for mail-in registrants and first-time voters;

(3) Voters' rights; and

(4) Prohibitions against fraud and misrepresentation.

The board of ballot commissioners shall also provide cards of instruction for voters in preparing their ballots and casting a provisional ballot as prescribed by the Secretary of State. The provisional ballot notice shall include a notification to voters of their rights as a provisional voter to inquire as to the correct precinct to cast a ballot and notification that if a ballot is cast in the incorrect precinct the ballot may not be counted at the canvass for that election. The board of ballot commissioners shall furnish a sufficient number of cards to the commissioners of election at the same time they deliver the ballots for the precinct. The instructions regarding a provisional ballot shall be posted in the precinct in a highly visible location for voters to review.

(b) The commissioners of election shall post one instruction card in each voting booth giving instructions to the voters on how to prepare the ballots for deposit in the ballot boxes and how to obtain a new ballot in place of one accidentally spoiled.

(c) The commissioners of election shall post one or more other cards of general information at places inside and outside of the voting place where voters pass or wait to vote. The commissioners shall also post the official write-in candidates in the same locations inside and outside of the voting place.

(d) The ballot commissioners shall have printed, on a different color paper than the official ballot, two or more copies of sample ballots for each voting place for each election. Sample ballots shall be furnished and posted with the cards of general information at each voting place.

(e) During the period of early in-person voting, the clerk of the county commission shall post the cards of general information, a list of official write-in candidates and sample ballots within the area where absentee voting is conducted.

WV Legislature

§3-1-21. Printing of official and sample ballots; number; packaging and delivery; correction of ballots.

(a) The board of ballot commissioners for each county shall provide the ballots and sample ballots necessary for conducting every election for public officers in which the voters of the county participate.

(b) The persons required to provide the ballots necessary for conducting all other elections are:

(1) The Secretary of State, for any statewide special election ordered by the Legislature;

(2) The board of ballot commissioners, for any countywide special election ordered by the county commission;

(3) The Board of Education, for any special levy or bond election ordered by the board of Education; or

(4) The municipal board of ballot commissioners, for any election conducted for or within a municipality except an election in which the matter affecting the municipality is placed on the county ballot at a county election. Ballots other than those printed by the proper authorities as specified in this section may not be cast, received or counted in any election.

(c) When paper ballots are used, the total number of regular official ballots printed shall equal one and one-twentieth times the number of registered voters eligible to vote that ballot. When paper ballots are used in conjunction with or as part of an electronic voting system, the total number of regular official ballots printed shall equal at a minimum eighty percent of the number of registered voters eligible to vote that ballot. The clerk of the county commission shall determine the number of absentee official ballots.

(d) The number of regular official ballots packaged for each precinct shall equal at a minimum seventy-five percent of the number of registered voters of the precinct. The remaining regular official ballots shall be packaged and delivered to the clerk of the county commission, who shall retain them unopened until they are required for an emergency. Each package of ballots shall be wrapped and sealed in a manner which will immediately make apparent any attempt to open, alter or tamper with the ballots. Each package of ballots for a precinct shall be clearly labeled, in a manner which cannot be altered, with the county name, the precinct number and the number of ballots contained in each package. If the packaging material conceals the face of the ballot, a sample ballot identical to the official ballots contained therein shall be securely attached to the outside of the package or, in the case of ballot cards, the type of ballot shall be included in the label.

(e) All absentee ballots necessary for conducting absentee voting in all voting systems shall be delivered to the clerk of the county commission of the appropriate county not later than the forty-second day before the election. All official ballots in paper ballot systems shall be

WV Legislature

delivered to the clerk of the county commission of the appropriate county not later than twenty-eight days before the election.

(f) Upon a finding of the board of ballot commissioners that an official ballot contains an error which, in the opinion of the board, is of sufficient magnitude to confuse or mislead the voters, the board shall cause the error to be corrected either by the reprinting of the ballots or by the use of stickers printed with the correction and of suitable size to be placed over the error without covering any other portion of the ballot.

WV Legislature

§3-1-21a. Vendors authorized to print ballots; eligibility; application and certification; denial, suspension and revocation of authorization; appeal.

(a) The printing of ballots for any election to be held pursuant to the provisions of this chapter shall be contracted for with a vendor authorized in accordance with the provisions of this section.

(b) Any vendor authorized to do business in West Virginia and in good standing may apply for a certificate of authorization to print ballots for elections in this state: Provided, That any individual, partnership, association or corporation who does not qualify as a resident vendor pursuant to the provisions of section thirty-seven-a, article three, chapter five-a of this code or who prints the ballots in a state which prohibits that state or any of its political subdivisions from contracting with West Virginia resident vendors for the printing of ballots or which prohibits the printing of ballots outside of such state, is not eligible to obtain a certificate of authorization.

(c) (1) Every vendor desiring to print ballots for elections held pursuant to the provisions of this chapter shall, prior to the execution of any contract for the printing of ballots with any state, county, or municipal government, obtain a certificate of authorization to print ballots.

(2) A certificate of authorization may be obtained by application to the Secretary of State, upon a form prescribed by the Secretary of State. The form shall include a statement that all printing, packaging and delivery specifications for ballots set forth in this chapter will be substantially met, and that the vendor applying for certification is eligible in accordance with the provisions of this section.

(3) Upon receipt of the completed application, the Secretary of State shall issue a certificate of authorization to print ballots, which shall remain in effect for two years from the date of issuance and may be renewed upon application therefor: Provided, That the Secretary of State may deny the application to issue or renew the certificate of authorization, or may suspend or revoke the certificate of authorization upon a determination that the vendor has not substantially complied with the printing, packaging and delivery specifications in the printing of ballots for any state, county or municipal election, or that the vendor is not eligible or is no longer eligible to print ballots pursuant to the provisions of this section. The Secretary of State shall give written notice of any such determination by certified mail, return receipt requested, to the vendor setting forth the reason for the suspension, revocation or the denial of the application or the denial of the renewal thereof. The applicant may, within sixty days of the receipt of such denial, file a written appeal with the state Election Commission. The State Election Commission shall promulgate rules establishing a hearing process for such appeals.

(d) On or before the second Monday of January of each year, the Secretary of State shall provide a list of all vendors authorized to print ballots for state, county and municipal elections to the clerk of each county commission of this state.

WV Legislature

§3-1-22. County court clerks to provide election supplies; requirements for poll books and ballot boxes.

The clerk of the county court of each county shall provide poll books, a list of all precincts within the county, tally sheets, ballot boxes, voting booths, registration records and forms, strong and durable envelopes upon which to make returns, blank forms for certifying returns and whatever further supplies are needed for holding the elections and making the returns thereof. The poll books shall bear upon each page the following heading: "Names of persons voting at precinct No. ..... in the District of ..... in the county of ..... on this (the) ..... day of ..... in the year ....." Such poll books shall have columns headed respectively: "Number of Voters," "Signature of Voter" and "Challenge of Voter", and shall have under the heading "Number of Voters" numbers in consecutive order to the bottom of each page. Forms for oaths of commissioners of election and poll clerks shall be written or printed on the poll books. Each ballot box shall be provided with two locks with different keys so that the key for one lock will not open the other and shall be so constructed as to be safely and securely closed and locked, with an opening in the lid of the box sufficient only for the passage of a single ballot.

WV Legislature

§3-1-23. County commission to arrange polling places and equipment; requirements.

The county commission in each county, before each election, shall secure, for each voting precinct in the county, a suitable room or building in which to hold the election, and shall cause the same to be suitably provided with heat, drinking water and light and a sufficient number of booths or compartments, each containing a table, counter or shelf, and furnished with proper supplies for preparing ballots, at or in which voters may conveniently prepare their ballots, so that in the preparation thereof they may be secure from the observation of others. The number of such booths or compartments shall not be less than two. Such room or building shall be located in such precinct: Provided, That upon a determination of the county commission that a suitable room or building in which to hold the election is not reasonably available in such precinct then the county commission may secure a suitable room or building in which to hold the election for such precinct in an adjacent precinct in said county, in a location as near as may be to the territory of the precinct for which such room or building is provided. At any polling place for which parking spaces are available nearby, at least one parking space shall be reserved for handicapped voters and clearly designated as such.

WV Legislature

§3-1-24. Obtaining and delivering election supplies.

(a) It shall be the duty of the clerk of the county commission to appoint one or more of the commissioners of election or poll clerks at each precinct of the county to attend at the office of the clerk of the county commission at least one day before each election to receive the ballots, ballot boxes, poll books, registration records and forms and all other supplies and materials for conducting the election at the respective precincts. The clerk shall take a receipt for the respective materials delivered to the commissioners of election or poll clerks and shall file the receipt in his or her office. It shall be the duty of the commissioners or poll clerks to receive the supplies and materials from the clerk and to deliver them with the seal of all sealed packages unbroken at the election precinct in time to open the election.

(b) The commissioners or poll clerks, if they perform the messenger services, shall receive the per diem and mileage rate prescribed by law for this service.

(c) Ballots shall be delivered in sealed packages with seals unbroken. For general and special elections the delivered ballots shall not be in excess of one and one-twentieth times the number of registered voters in the precinct. For primary elections the ballots for each party shall be in a separately sealed package containing not more than one and one-twentieth times the number of registered voters of each party in the election precinct.

(d) For primary elections one copy of the poll books, including the written or printed forms for oaths of commissioners of election and poll clerks, shall be supplied at each voting precinct for each political party appearing on the primary ballot.

(e) There shall be two ballot boxes for each election precinct for which a receiving and a counting board of election commissioners have been appointed.

WV Legislature

§3-1-25. Supplies by special messenger.

In case any commissioner of election or poll clerk fails to appear at the offices of the clerk of the county commission by the close of the clerk's office on the day prior to any election, the board of ballot commissioners, the chairman or the clerk of the county commission shall forthwith dispatch a special messenger to the commissioners of election of each respective precinct with the ballots, registration records, ballot boxes, poll books and other supplies for the precinct. The messenger, if not a county employee, shall be allowed $5 for this service. The messenger shall also receive mileage up to the rate of reimbursement authorized by the travel management rule of the Department of Administration for each mile necessarily traveled in the performance of his or her services. The messenger shall promptly report to the clerk of county commission and file with the clerk the receipts of the person to whom he or she delivered the ballots and other supplies and his or her affidavit stating when and to whom he or she delivered them.

WV Legislature

§3-1-26. Election supplies in emergencies.

If, by any accident or casualty, the ballots or ballot box or boxes delivered to a commissioner of election, or to any messenger, shall be lost or destroyed, it shall be the duty of such commissioner or messenger to report the loss forthwith to the board of ballot commissioners and clerk of the county court from whom the same were, or was, obtained, and make affidavit of the circumstances of the loss; whereupon such board and clerk shall at once send a new supply by special messenger, as provided in other cases. If, for any reason, there should be found no ballots, or ballot box, or other necessary means or contrivances for voting, at the opening of the polls, it shall be the duty of the commissioners of election to secure the same as speedily as possible and, if necessary, the ballot commissioners may have ballots printed or written, and the election commissioners may have a ballot box or boxes made.

WV Legislature

§3-1-27. Municipal precinct registration records.

At least one day prior to every municipal election, it shall be the duty of the appropriate officer designated by the municipality to procure from the municipal precinct file in the office of the clerk of the county commission the registration records necessary for the conduct of such election.

Such records shall, within ten days after the date of the municipal election, be returned to the office of the clerk of the county commission by the appropriate officer or officers designated by the municipality.

In case of a contested municipal election, the registration record of any challenged voter shall be made available by the clerk of the county commission to the officer or tribunal empowered to determine the contest. Such record shall be returned to the office of the clerk of the county commission within a reasonable time after the contest shall have been finally decided.

The clerk of the county commission shall acknowledge the release and return of the registration records under this section by the issuance of appropriate receipts.

In the event any municipal registration record is lost, destroyed, defaced or worn in any way as to warrant replacement, it shall be the duty of the clerk of the county commission to prepare a duplicate of such record and it shall be the duty of the municipality to pay for such replacement.

WV Legislature

§3-1-28. Election officials; eligibility; suspension of eligibility.

(a) To be eligible to be appointed or serve as an election official in any state, county, or municipal election held in West Virginia, a person:

(1) Must be a registered voter of the county for elections held throughout the county and a registered voter of the municipality for elections held within the municipality: *Provided*, That if the required number of persons eligible to serve as election officials for a municipal election are not available or are not willing to serve as election officials for a municipal election, a registered voter of the county in which the municipality is located may serve as an election official for elections held within the municipality;

(2) Must be able to read and write the English language;

(3) May not be a candidate on the ballot or an official write-in candidate in the election for any office, other than for district, county, or state political party executive committee;

(4) May not be the parent, child, sibling, or spouse of a candidate on the ballot for any office, other than for district, county, or state political party executive committee, or an official write-in candidate for any office, other than for district, county, or state political party executive committee, in the precinct where the official serves;

(5) May not be a person prohibited from serving as an election official pursuant to any other federal or state statute; and

(6) May not have been previously convicted of a violation of any election law.

(b) The governing body responsible for appointing election officials may establish a program to permit a student who is a junior or senior student attending a secondary educational institution or being home schooled and who is an election official trainee to be appointed as an election official.

(1) To be eligible to be appointed as an election official under this subsection, a person:

(A) Must meet the requirements of subdivisions two through six of §3-1-28(a) of this code;

(B) Must be a junior or senior student in good standing who is attending a public or private secondary educational institution or being home schooled at the time of the election for which he or she is to be appointed as an election official;

(C) Must have a cumulative grade point average equivalent to at least 3.0 on a 4.0 scale, if attending a public or private secondary educational institution;

(D) Must have the written approval of his or her parent or legal guardian, as applicable;

(E) Must have the written approval of the principal of the public or private secondary

WV Legislature

educational institution he or she attends, if

(i) attending a public or private secondary educational institution, and

(ii) if the appointment requires the student to work on a day when school is in session; and

(F) Must have satisfactorily completed the training program for election officials set forth in §3-1-46 of this code.

(2) Only one election official qualifying under this subsection may serve per political party per precinct. Prior to appointment, an election official qualifying under this subsection must certify in writing to the governing body responsible for appointing election officials his or her political party affiliation.

(3) Students appointed as election officials under this subsection shall not be counted as absent from school on the day they serve as election officials.

(c) The county commission may, upon majority vote, suspend the eligibility to serve as an election official in any election for four years for the following reasons:

(1) Failure to appear at the polling place at the designated time without proper notice and just cause;

(2) Failure to perform the duties of an election official as required by law;

(3) Improper interference with a voter casting a ballot or violating the secrecy of the voter's ballot;

(4) Being under the influence of alcohol or drugs while serving as an election official; or

(5) Having anything wagered or bet on an election.

(d) The county commission may, upon majority vote, suspend the eligibility to serve as an election official in any election for two years upon petition of 25 registered voters of the precinct where the official last served and upon presentation of evidence of any of the grounds set forth in §31-1-28(b) of this code: *Provided*, That the petition requesting the suspension of the election official is filed with the county commission at least 90 days prior to an election date. The names of those persons signing the petition must be kept confidential.

WV Legislature

§3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.

(a) For the purpose of this article:

(1) The term "standard receiving board" means those election officials charged with conducting the process of voting within a polling location and consists of no less than five persons, to be comprised as follows:

(A) Each polling location shall have at least one team of poll clerks, one team of election commissioners for the ballot box, and one additional election commissioner; and

(B) At the discretion of the county clerk and county commission, any county may add additional teams of poll clerks and commissioners to any polling location, as necessary to fairly and efficiently conduct an election;

(2) The term "counting board" means those election officials charged with counting the ballots at the polling location in counties using paper ballots and includes one team of poll clerks, one team of election commissioners, and one additional commissioner.

(3) The term "team of poll clerks" or "team of election commissioners" means two persons appointed by opposite political parties to perform the specific functions of the office: *Provided*, That no team of poll clerks or team of election commissioners may consist of two persons with the same registered political party affiliation or two persons registered with no political party affiliation; and

(4) The term "election official trainee" means an individual who is 16 or 17 years of age who meets the requirements of subdivisions §3-1-28(2–6) of this code.

(b) For each primary and general election in the county, the county commission shall designate the number and type of election boards for the various polling locations according to the provisions of this section. At least 84 days before each primary and general election the county commission shall notify the county executive committees of the two major political parties in writing of the number of nominations which may be made for poll clerks and election commissioners.

(c) Until July 1, 2032, for each municipal election held at a time when there is no county or state election:

(1) The governing body of the municipality shall perform the duties of the county commission as provided in this section; and

(2) The standard receiving board may, at the discretion of the official charged with the administration of election, consist of as few as four persons, including one team of poll clerks and one team of election commissioners for the ballot box.

WV Legislature

§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.

NOTE: West Virginia Code §3-1-30 was amended by two bills passed during the 2022 Regular Session of the Legislature. When two acts of the Legislature amend the same section of the Code without express recognition in the bill of the action of the other bill, the Legislative Manager makes no determination as to the appropriate, legal effect of the two acts. Therefore, BOTH versions of this section are set out below.

The latter act, House Bill 4353 (passed on March 12, 2022), amended West Virginia Code §3-1-30 to read as follows:

(a) For any primary, general, or special election held throughout a county, poll clerks and election commissioners may be nominated as follows:

(1) The county executive committee for each of the two major political parties may, by a majority vote of the committee at a duly called meeting, nominate one qualified person for each team of poll clerks and one qualified person for each team of election commissioners to be appointed for the election;

(2) The appointing body shall select one qualified person as the additional election commissioner for each board of election officials;

(3) Each county executive committee shall also nominate qualified persons as alternates for at least 10 percent of the poll clerks and election commissioners to be appointed in the county and is authorized to nominate as many qualified persons as alternates as there are precincts in the county to be called upon to serve in the event any of the persons originally appointed fail to accept appointment or fail to appear for the required training or for the preparation or execution of their duties;

(4) When an executive committee nominates qualified persons as poll clerks, election commissioners, or alternates, the committee, or its chair or secretary on its behalf, shall file in writing with the appointing body, no later than the 70th day before the election, a list of those persons nominated and the positions for which they are designated.

(b) For any municipal primary, general, or special election, the poll clerks and election commissioners may be nominated as follows:

(1) In municipalities which have municipal executive committees for the two major political parties in the municipality, each committee may nominate election officials in the manner provided for the nomination of election officials by county executive committees in subsection (a) of this section;

(2) In municipalities which do not have executive committees, the governing body shall provide by ordinance for a method of nominating election officials or shall nominate as many eligible persons as are required, giving due consideration to any recommendations made by voters of the municipality or by candidates on the ballot.

WV Legislature

(c) The governing body responsible for appointing election officials is:

(1) The county commission for any primary, general, or special election ordered by the county commission and any joint county and municipal election;

(2) The municipal governing body for any primary, general or special municipal election ordered by the governing body.

(d) The qualifications for persons nominated to serve as election officials may be confirmed prior to appointment by the clerk of the county commission for any election ordered by the county commission or for any joint county and municipal election and by the official recorder of the municipality for a municipal election.

(e) The appropriate governing body shall appoint the election officials for each designated election board no later than the 49th day before the election as follows:

(1) Those eligible persons whose nominations for poll clerk and election commissioner were timely filed by the executive committees and those additional persons selected to serve as an election commissioner are to be appointed; and

(2) The governing body shall fill any positions for which no nominations were filed.

(f) At the same time as the appointment of election officials or at a subsequent meeting the governing body shall appoint persons as alternates: *Provided*, That no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official or is instructed to attend and actually attends training as an alternate and is available to serve on election day. Alternates shall be appointed and serve as follows:

(1) Those alternates nominated by the executive committees shall be appointed;

(2) The governing body may appoint additional alternates who may be called upon to fill vacancies after all alternates designated by the executive committees have been assigned, have declined to serve or have failed to attend training; and

(3) The governing body may determine the number of persons who may be instructed to attend training as alternates.

(g) The clerk of the county commission shall appoint qualified persons to fill all vacancies existing after all previously appointed alternates have been assigned, have declined to serve, or have failed to attend training.

(h) Within seven days following appointment, the clerk of the county commission shall notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their appointment and include with the notice a response notice form for the appointed person to return indicating whether or not he or she agrees to serve in the specified capacity in the election.

WV Legislature

(i) The position of any person notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve within 14 days following the date of appointment is considered vacant and the clerk shall proceed to fill the vacancies according to the provisions of this section.

(j) If the governing body and the clerk of the county commission are unable to nominate a sufficient number of qualified persons agreeing to serve on a standard receiving board for each precinct, the clerk may assign members of one precinct's standard receiving board to serve simultaneously on the standard receiving board of another precinct where the polling places of both precincts are located within the same physical building or facility: *Provided*, That no more than three precincts within the same building or facility may share board members in this manner.

(k) On election day, if an appointed election official or a poll clerk working a full day fails to appear at the polling place by 5:45 a.m. or, for a poll clerk working a half day, later than a time designated by the clerk of the county commission, the election officials present shall contact the office of the clerk of the county commission for assistance in filling the vacancy. The clerk shall proceed as follows:

(1) The clerk may attempt to contact the person originally appointed, may assign an alternate nominated by the same political party as the person absent if one is available or, if no alternate is available, may appoint another eligible person;

(2) If the election officials present are unable to contact the clerk within a reasonable time, they shall diligently attempt to fill the position with an eligible person of the same political party as the party that nominated the person absent until a qualified person has agreed to serve;

(3) If two teams of election officials, as defined in §3-1-29 of this code, are present at the polling place, the person appointed to fill a vacancy in the position of the additional commissioner may be of either political party.

(l) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county commission as provided in this section.

(m) Nothing in this section shall be construed to require any county executive committee or county commission to offer half-day shifts for poll clerks during any election.

The earlier act, Senate Bill 191 (passed on January 25, 2022) amended West Virginia Code §3-1-30 to read as follows:

(a) For any primary, general or special election held throughout a county, poll clerks and election commissioners may be nominated as follows:

(1) The county executive committee for each of the two major political parties may, by a

WV Legislature

majority vote of the committee at a duly called meeting, nominate one qualified person for each team of poll clerks and one qualified person for each team of election commissioners to be appointed for the election;

(2) The appointing body shall select one qualified person as the additional election commissioner for each board of election officials;

(3) Each county executive committee shall also nominate qualified persons as alternates for at least 10 percent of the poll clerks and election commissioners to be appointed in the county and is authorized to nominate as many qualified persons as alternates as there are precincts in the county to be called upon to serve in the event any of the persons originally appointed fail to accept appointment or fail to appear for the required training or for the preparation or execution of their duties;

(4) When an executive committee nominates qualified persons as poll clerks, election commissioners or alternates, the committee, or its chair or secretary on its behalf, shall file in writing with the appointing body, no later than the 70th day before the election, a list of those persons nominated and the positions for which they are designated.

(b) For any municipal primary, general or special election, the poll clerks and election commissioners may be nominated as follows:

(1) In municipalities which have municipal executive committees for the two major political parties in the municipality, each committee may nominate election officials in the manner provided for the nomination of election officials by county executive committees in subsection (a) of this section;

(2) In municipalities which do not have executive committees, the governing body shall provide by ordinance for a method of nominating election officials or shall nominate as many eligible persons as are required, giving due consideration to any recommendations made by voters of the municipality or by candidates on the ballot.

(c) The governing body responsible for appointing election officials is:

(1) The county commission for any primary, general or special election ordered by the county commission and any joint county and municipal election;

(2) The board of education for any special election ordered by the board of education conducted apart from any other election;

(3) The municipal governing body for any primary, general or special municipal election ordered by the governing body.

(d) The qualifications for persons nominated to serve as election officials may be confirmed prior to appointment by the clerk of the county commission for any election ordered by the county commission or for any joint county and municipal election and by the official recorder

WV Legislature

of the municipality for a municipal election.

(e) The appropriate governing body shall appoint the election officials for each designated election board no later than the 49th day before the election as follows:

(1) Those eligible persons whose nominations for poll clerk and election commissioner were timely filed by the executive committees and those additional persons selected to serve as an election commissioner are to be appointed;

(2) The governing body shall fill any positions for which no nominations were filed.

(f) At the same time as the appointment of election officials or at a subsequent meeting the governing body shall appoint persons as alternates. However, no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official or is instructed to attend and actually attends training as an alternate and is available to serve on election day. Alternates shall be appointed and serve as follows:

(1) Those alternates nominated by the executive committees shall be appointed;

(2) The governing body may appoint additional alternates who may be called upon to fill vacancies after all alternates designated by the executive committees have been assigned, have declined to serve or have failed to attend training; and

(3) The governing body may determine the number of persons who may be instructed to attend training as alternates.

(g) The clerk of the county commission shall appoint qualified persons to fill all vacancies existing after all previously appointed alternates have been assigned, have declined to serve or have failed to attend training.

(h) Within seven days following appointment, the clerk of the county commission shall notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their appointment and include with the notice a response notice form for the appointed person to return indicating whether or not he or she agrees to serve in the specified capacity in the election.

(i) The position of any person notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve within 14 days following the date of appointment is considered vacant and the clerk shall proceed to fill the vacancies according to the provisions of this section.

(j) If the governing body and the clerk of the county commission are unable to nominate a sufficient number of qualified persons agreeing to serve on a standard receiving board for each precinct, the clerk may assign members of one precinct's standard receiving board to serve simultaneously on the standard receiving board of another precinct where the polling places of both precincts are located within the same physical building or facility: *Provided*,

WV Legislature

That no more than three precincts within the same building or facility may share board members in this manner.

(k) On election day, if an appointed election official or a poll clerk working a full day fails to appear at the polling place by 5:45 a.m. or, for a poll clerk working a half day, a later time designated by the clerk of the county commission, the election officials present shall contact the office of the clerk of the county commission for assistance in filling the vacancy. The clerk shall proceed as follows:

(1) The clerk may attempt to contact the person originally appointed, may assign an alternate nominated by the same political party as the person absent if one is available or, if no alternate is available, may appoint another eligible person;

(2) If the election officials present are unable to contact the clerk within a reasonable time, they shall diligently attempt to fill the position with an eligible person of the same political party as the party that nominated the person absent until a qualified person has agreed to serve;

(3) If two teams of election officials, as defined in §3-1-29 of this code, are present at the polling place, the person appointed to fill a vacancy in the position of the additional commissioner may be of either political party.

(l) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county commission as provided in this section.

(m) Nothing in this section shall be construed to require any county executive committee or county commission to offer half day shifts for poll clerks during any election.

WV Legislature

§3-1-30a. Oaths of election commissioners and poll clerks, substitution of persons.

(a) Each commissioner of election and poll clerk, as defined in this article, before entering upon his or her duties, shall take orally and subscribe to the appropriate oath, as prescribed herein. Such oath may be taken before and administered by one of the election commissioners or poll clerks, who in turn may take the same before another election commissioner or poll clerk. For the purposes of this article, all election commissioners and poll clerks, having first been sworn, are authorized to administer oaths.

(1) The oath for members of the receiving board shall be as follows:

State of West Virginia

..... County

I, ..., a qualified and registered voter of the county affiliated with the ..... Party, do solemnly swear that I will faithfully and honestly discharge my duties as ..... (poll clerk or election commissioner) of the receiving board according to the requirements of law in this election; that I will not knowingly permit any person to vote an unchallenged ballot who is not a resident of the precinct and a properly registered voter qualified to vote the ballot provided; that I will not challenge a ballot without just cause; that I will not cause any unnecessary delay in voting; that I will not disclose to any person how any voter has voted, nor how any ballot has been folded, marked, printed or stamped; that I do not have any agreement, understanding or arrangement that I will receive any money, position or other benefit for service in the election apart from my official pay; that I do not have any agreement, understanding or arrangement that I will perform any act for the benefit of any candidate in the election; and that I have nothing wagered or bet on the result of this election.

Subscribed and sworn to before me this ..... day of ....., 19....

.....

Signature and official title

of person before whom sworn

(2) The oath for the members of the counting board shall be as follows:

State of West Virginia

..... County

I, ..., a qualified and registered voter of the county affiliated with the ..... Party, do solemnly swear that I will faithfully and honestly discharge my duties as .....(poll clerk or election commissioner) of the counting board

WV Legislature

according to the requirements of law in this election; that I will carefully and accurately read and record the votes cast on each ballot voted in the election which contains the signatures of both poll clerks; that I will not disclose to any person how any voter has voted, nor how any ballot has been folded, marked, printed or stamped; that I will not disclose the votes cast for any candidate or any other information about the result of the election prior to the posting of the precinct returns on the door of the polling place; that I do not have any agreement, understanding or arrangement that I will receive any money, position or other benefit for service in the election apart from my official pay; that I do not have any agreement, understanding or arrangement that I will perform any act for the benefit of any candidate in the election; and that I have nothing wagered or bet on the result of this election.

.....

Subscribed and sworn to before me this ..... day of ....., 19....

.....

Signature and official title

of person before whom sworn

(3) The Secretary of State may prescribe the form of such oaths.

(b) When any election official is unable to perform the duties for which he or she was appointed, a substitution may be made, as follows:

(1) An eligible person of the same political party shall assume the duties after taking the oath. One of the election commissioners shall make an entry in the space provided on the oath form, indicating the name of the official being replaced, the reason for the change, the name of the person assuming the duties, the time at which the change occurred and the poll slip number of the last voter who signed a poll slip before the change occurred;

(2) If it is necessary for a poll clerk of one political party to exchange duties with an election commissioner of the same political party, the change of duties for each person shall be recorded in the same manner;

(3) If an election commissioner or poll clerk is unable or fails to perform the duties of the office adequately and according to the requirements of law to the extent such failure interferes with the conduct of the election, the clerk of the county commission may order the exchange of duties with another official of the same party, or if necessary, remove the official. The fact of that order shall be entered on the record, along with the information required in subdivision (1) of this subsection.

(c) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county

WV Legislature

commission specified in this section.

WV Legislature

§3-1-31. Days and hours of elections; scheduling of local elections; extension or shortening of terms of certain elected local officials.

(a) General elections shall be held in the several election precincts of the state on the Tuesday next after the first Monday in November of each even year. Primary and special elections shall be held on the days provided by law therefor: *Provided*, That all local municipal elections shall be held concurrently with a regularly scheduled statewide primary or general election. In exercising this obligation, a municipality shall negotiate an agreement with the county commission to establish the election date, election officials, registration books to be used, and other matters pertaining to changing the municipal election to be held on the same day as a regularly scheduled statewide primary or general election: *Provided, however*, That a municipality which enters into an agreement with a county commission to hold elections at the same time as a regularly scheduled statewide primary or general election day pursuant to §8-5-5 of this code shall share in the administrative costs of holding the election, which shall not exceed the municipality's pro rata share of voters registered in the municipality compared with the total voters registered in the county: *Provided further*, That the municipality shall also comply with the requirements of §8-5-5 of this code regarding an agreement with the county regarding use of county election officials in municipal elections.

(b) At every primary, general, or special election the polls shall be opened in each precinct on the day of the election at 6:30 in the morning and be closed at 7:30 in the evening.

WV Legislature

§3-1-32. Opening and closing polls; procedure.

At the time of opening the polls in all precincts wherein voting machines are not to be used, the election commissioners shall examine the ballot box and ascertain that there are no ballots in the same, and they shall thereupon securely lock the box and give one key to one of the commissioners and one to a commissioner of the opposite political party, who shall hold the same, and such boxes shall not be again opened until the time to begin counting the votes arrives and for that purpose. At or before opening the polls, the commissioners of election shall open the package containing the ballots in such manner as to preserve the seals intact and thereupon deliver all of the ballots to the poll clerk. Before any voter is permitted to vote, the commissioners of election shall proclaim that such election is opened. When the polls are closed, proclamation must be made of the fact by one of the commissioners of election to the people outside, in a loud and audible tone of voice, and a minute of such proclamation and of the time when it was made must be entered on the pollbooks by the clerks. The election commissioner shall permit those electors to vote who are present at the polling place prior to the hour specified for the closing of the polls: Provided, That at that time they are in a line awaiting their turn to vote within the voting room itself or, if the line extends outside of the voting room itself, within that line. In that event an election commissioner from each party shall immediately after the closing proclamation begin with the last voter in line and together supply the voters within the line with waiting-voter permits which shall be prescribed by the Secretary of State. Each voter shall sign his permit in the presence of both commissioners who shall then likewise affix their signatures to the permit in the presence of the voter and each other. After each such voter in line has received and signed his permit and the election commissioners have affixed their signatures thereto, voting shall be resumed. Each voter shall present his permit to one of the poll clerks so that the signature thereon may be compared to the voter's signature when he signs the pollbook. Each permit so presented shall be attached to the page in the pollbook on which the voter affixed his signature. In no case shall any person who arrives at the polling place after the closing hour be given a waiting-voter permit or be allowed to vote. After the final voter presents his waiting-voter permit and casts his ballot no more ballots shall be cast or received.

www.legislature

§3-1-33. How elections conducted by double boards.

In all precincts wherein two election boards shall have been appointed, the receiving board shall attend at the opening of the polls, shall open the polls, and shall proceed with the election. The counting board shall attend at the voting place not later than three hours after the opening of the polls, and shall take charge of the ballot box containing the ballots theretofore cast in that precinct. They shall retire to a partitioned room or space in the voting place and there proceed to count and tabulate the ballots cast, as they shall find them deposited in the ballot box. The receiving board shall continue to receive the vote of electors in the other box, until such time as the counting board shall have finished counting and tabulating the ballots cast in the first ballot box. The county board shall, before exchanging the ballot boxes as herein provided, seal the ballots counted by it in envelopes to be provided for the purpose, which shall not be opened until the two boards shall together proceed with counting, tabulating and summarizing the votes as by this chapter provided. The two boards shall then exchange the first box for the second box, and so continue until the hour of closing the polls arrives.

WV Legislature

§3-1-34. Voting procedures generally; identification; assistance to voters; voting records; penalties.

(a) A person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the person's name and residence in a clear and distinct tone of voice. The person desiring to vote shall present to one of the poll clerks a valid identifying document meeting the requirements of §3-1-34(a)(1) or §3-1-34(a)(2) of this code, and the poll clerk shall inspect and confirm that the name on the valid identifying document conforms to the name in the individual's voter registration record and that, if the valid identifying document contains a photograph, the image displayed is truly an image of the person presenting the document. If that person is found to be duly registered as a voter at that precinct, he or she shall sign his or her name in the designated location provided at the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. A ballot may not be given to the person until he or she signs his or her name on the designated location or his or her signature is affixed thereon.

(1) A document is a valid identifying document if it:

(A) Has been issued either by the State of West Virginia, one of its political subdivisions or instrumentalities, or by the United States Government;

(B) Contains the name of the person desiring to vote; and

(C) Contains a photograph of the person desiring to vote: *Provided*, That a driver's license or identification card issued in accordance with §17B-2-1(f)(4) of this code that does not contain a photograph of the person desiring to vote is a valid identifying document.

(2) Notwithstanding the provisions of §3-1-34(a)(1) of this code, the following documents, if they contain the voter's name, shall be considered valid identifying documents, and a person desiring to vote may produce any of the following:

(A) A valid West Virginia driver's license or valid West Virginia identification card issued by the West Virginia Division of Motor Vehicles, including a driver's license or identification card issued in accordance with §17B-2-1(f)(4) of this code.

(B) A valid driver's license issued by a state other than the State of West Virginia;

(C) A valid United States passport or passport card;

(D) A valid employee identification card with a photograph of the eligible voter issued by any branch, department, agency, or entity of the United States Government or of the State of West Virginia, or by any county, municipality, board, authority, or other political subdivision of West Virginia;

WV Legislature

(E) A valid student identification card with a photograph of the eligible voter issued by an institution of higher education in West Virginia, or a valid high school identification card issued by a West Virginia high school;

(F) A valid military identification card issued by the United States with a photograph of the person desiring to vote; or

(G) A valid voter registration card that includes the voter's photograph issued by a county clerk in the State of West Virginia or the Secretary of State. The county clerk or the Secretary of State may not charge or collect a fee for the application or issuance of a voter registration card that includes the voter's photograph.

(3) Any expired document identified in §3-1-34(a)(2) of this code is a valid identifying document if presented by a registered voter 65 years of age or older: *Provided*, That the identifying document was not expired on the registered voter's 65th birthday.

(4) In lieu of providing a valid identifying document, as required by this section, a registered voter may be accompanied at the polling place by an adult known to the registered voter for at least six months. That adult may sign an affidavit on a form provided to clerks and poll workers by the Secretary of State, which states under oath or affirmation that the adult has known the registered voter for at least six months, and that in fact the registered voter is the same person who is present for the purpose of voting. For the affidavit to be considered valid, the adult shall present a valid identifying document with his or her name, address, and photograph.

(5) A poll worker may allow a voter, whom the poll worker has known for at least six months, to vote without presenting a valid identifying document.

(6) If the person desiring to vote is unable to furnish a valid identifying document, or if the poll clerk determines that the proof of identification presented by the voter does not qualify as a valid identifying document, the person desiring to vote shall be permitted to cast a provisional ballot after executing an affidavit affirming his or her identity pursuant to §3-1-34(a)(6)(B) of this code.

(A) The provisional ballot may be counted once the election authority verifies the identity of the individual by comparing that individual's signature to the current signature on file with the election authority and determines that the individual was otherwise eligible to cast a ballot at the polling place where the ballot was cast.

(B) The affidavit to be used for voting shall be substantially in the following form:

"State of West Virginia

County of.....

I do solemnly swear (or affirm) that my name is .....; that I reside

WV Legislature

at.....; and that I am the person listed in the precinct register under this name and at this address.

I understand that knowingly providing false information is a violation of law and subjects me to possible criminal prosecution.

.....

Signature of voter

Subscribed and affirmed before me this..... day of ....., 20....

.....

Name of Election Official

.....

Signature of Election Official".

(7) A voter who votes in person at a precinct polling place that is located in a building which is part of a state licensed care facility where the voter is a resident is not required to provide proof of identification as a condition before voting in an election.

(8) The person entering voter information into the centralized voter registration database shall cause the records to indicate when a voter has not presented a valid identifying document and has executed a voter identity affidavit.

(9) If a voter participating in the Address Confidentiality Program established by §48-28A-103 of this code, executes a voter identity affidavit, the program participant's residential or mailing address is subject to the confidentiality provisions of §48-28A-108 of this code and shall be used only for those statutory and administrative purposes authorized by this section.

(10) The Secretary of State shall educate voters about the requirement to present a valid identifying document and develop a program to help ensure that all eligible voters are able to obtain a valid identifying document.

(b) The clerk of the county commission may, upon verification that the precinct at which a handicapped person is registered to vote is not handicap accessible, transfer that person's registration to the nearest polling place in the county which is handicap accessible. A request by a handicapped person for a transfer of registration must be received by the county clerk no later than 30 days prior to the date of the election. A handicapped person who has not made a request for a transfer of registration at least 30 days prior to the date of the election may vote a provisional ballot at a handicap accessible polling place in the county of his or her registration. If during the canvass the county commission determines that the

WV Legislature

person had been registered in a precinct that is not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The handicapped person may vote in the precinct to which the registration was transferred only as long as the disability exists or the precinct from which the handicapped person was transferred remains inaccessible to the handicapped. To ensure confidentiality of the transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked envelope and an outer envelope designated "provisional ballot/handicapped voter". After validation of the ballot at the canvass, the outer envelope shall be destroyed and the handicapped voter's ballot shall be placed with other approved provisional ballots prior to removal of the ballot from the unmarked envelope.

(c) When the voter's signature is properly marked and the voter has presented a valid identifying document, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side. The voter shall then retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in §3-6-5 of this code.

(d) A poll clerk shall, in the presence of the other poll clerk, indicate by a check mark, or by other means, inserted in the appropriate place on the registration record of each voter the fact that the voter voted in the election. In primary elections the clerk shall also insert on the registration record of each voter a distinguishing initial or initials of the political party for whose candidates the voter voted. If a person is challenged at the polls, the challenge shall be indicated by the poll clerks on the registration record, together with the name of the challenger. The subsequent removal of the challenge shall be recorded on the registration record by the clerk of the county commission.

(e) (1) A voter may not receive any assistance in voting unless, by reason of blindness, disability, advanced age, or inability to read and write, that voter is unable to vote without assistance. Any voter qualified to receive assistance in voting may:

(A) Declare his or her choice of candidates to an Election Commissioner of each political party who, in the presence of the voter and in the presence of each other, shall prepare the ballot for voting in the manner provided in this section and, on request, shall read to the voter the names of the candidates selected on the ballot;

(B) Require the Election Commissioners to indicate to him or her the relative position of the names of the candidates on the ballot. The voter shall then retire to one of the booths or compartments to prepare his or her ballot in the manner provided in this section;

(C) Be assisted by any person of the voter's choice, other than the voter's present or former

WV Legislature

employer or agent of that employer, the officer or agent of a labor union of which the voter is a past or present member or a candidate on the ballot or an official write-in candidate; or

(D) If he or she is handicapped, vote from an automobile outside the polling place or precinct by the absentee balloting method provided in §3-3-5(e) of this code in the presence of an Election Commissioner of each political party if all of the following conditions are met:

(i) The polling place is not handicap accessible; and

(ii) Voters are not voting or waiting to vote inside the polling place.

(2) The voted ballot shall then be returned to the precinct officials and secured in a sealed envelope to be returned to the clerk of the county commission with all other election materials. The ballot shall then be tabulated using the appropriate method provided in §3-1-8 of this code as it relates to the specific voting system in use.

(3) A voter who requests assistance in voting but who is believed not to be qualified for assistance under the provisions of this section shall be permitted to vote a provisional ballot with the assistance of any person authorized in this section to render assistance.

(4) One or more of the Election Commissioners or poll clerks in the precinct may challenge the ballot on the ground that the voter received assistance in voting if when in his, her or their opinion the person who received assistance in voting is not so illiterate, blind, disabled or of such advanced age as to have been unable to vote without assistance. The Election Commissioner or poll clerk or commissioners or poll clerks making the challenge shall enter the challenge and the reason for such challenge on the form and in the manner prescribed or authorized by §3-3-1 *et seq*. of this code.

(5) An Election Commissioner or other person who assists a voter in voting:

(A) May not in any manner request or seek to persuade or induce the voter to vote a particular ticket or for a particular candidate or for or against any public question and shall not keep or make any memorandum or entry of anything occurring within the voting booth or compartment and shall not, directly or indirectly, reveal to any person the name of a candidate voted for by the voter, which ticket he or she had voted, how he or she had voted on any public question, or anything occurring within the voting booth, compartment, or voting machine booth except when required by law to give testimony as to the matter in a judicial proceeding; and

(B) Shall sign a written oath or affirmation before assisting the voter on a form prescribed by the Secretary of State stating that he or she will not override the actual preference of the voter being assisted, attempt to influence the voter's choice, or mislead the voter into voting for someone other than the candidate of voter's choice. The person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation. There is no requirement that a person providing assistance to a voter is

WV Legislature

required to sign an oath or affirmation where the reason for requesting assistance is the voter's inability to vote without assistance because of blindness as defined in §5-15-3 of this code and the inability to vote without assistance because of blindness is certified in writing by a physician of the voter's choice and is on file in the office of the clerk of the county commission.

(6) In accordance with instructions issued by the Secretary of State, the clerk of the county commission shall provide a form entitled "list of assisted voters", on a form as prescribed by the Secretary of State. The commissioners shall enter the name of each voter receiving assistance in voting the ballot, together with the poll slip number of that voter and the signature of the person or the commissioner from each party who assisted the voter. If no voter has been assisted in voting, the commissioners shall make and subscribe to an oath of that fact on the list.

(f) After preparing the ballot, the voter shall fold the ballot so that the face is not exposed and the names of the poll clerks on it are seen. The voter shall announce his or her name and present his or her ballot to one of the commissioners who shall hand the ballot to another commissioner, of a different political party, who shall deposit it in the ballot box if the ballot is the official one and properly signed. The Commissioner of Election may inspect every ballot before it is deposited in the ballot box to ascertain whether it is single, but without unfolding or unrolling it so as to disclose its content. When the voter has voted, he or she shall retire immediately from the election room and beyond the 60-foot limit and not return except by permission of the commissioners.

(g) Following the election, the oaths or affirmations required by this section from those assisting voters, together with the "list of assisted voters", shall be returned by the Election Commissioners to the clerk of the county commission along with the election supplies, records, and returns. The clerk of the county commission shall make the oaths, affirmations, and list available for public inspection and preserve them for a period of 22 months or until disposition is authorized or directed by the Secretary of State or court of record. The clerk may use these records to update the voter registration records in accordance with §3-2-18(d) of this code.

(h) Any person making an oath or affirmation required under the provisions of this section who knowingly swears falsely or any person who counsels, advises, aids, or abets another in the commission of false swearing under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for a period of not more than one year, or both fined and confined.

(i) Any Election Commissioner or poll clerk who authorizes or provides unchallenged assistance to a voter when the voter is known to the Election Commissioner or poll clerk not to require assistance in voting, is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned in a state correctional facility for a period of not less than one year nor more than five years, or both fined and imprisoned.

WV Legislature

§3-1-35. Ballots to be furnished voters.

In general and special elections the ballots for all voters of an election precinct shall be the same. In primary elections the ballot of the voter's political party at that election in that precinct shall be furnished to the voter together with separate ballots, if any, on any nonpartisan candidates and any public questions submitted to the voters generally at such primary election. In the event the voter is lawfully registered as "independent" or as an adherent of a political party not appearing on any primary election ballot to be voted in his precinct, he shall not, in a primary election, be given or entitled to vote any party ballot but shall be furnished any separate ballots to be voted thereat on nonpartisan candidates and public questions.

WV Legislature

§3-1-36. Report on and disposition of ballots spoiled or not used.

Any voter who shall spoil, deface or mutilate the ballot delivered to him, on returning the same to the poll clerks, shall receive another in place thereof. Every person who does not vote any ballot delivered to him shall, before leaving the election room, return such ballot to the poll clerks. When a spoiled or defaced ballot is returned, the poll, clerks shall make a minute of the fact on the pollbooks, at the time, and the word "spoiled" shall be written across the face of the ballot and such ballot shall be placed in an envelope for spoiled ballots.

Immediately on closing the polls, the commissioners of election shall ascertain the number of ballots spoiled during the election and the number of ballots remaining not voted. The commissioners of election shall also ascertain from the pollbooks the number of persons who voted and shall report, over their signatures, to the clerk of the county commission, the number of votes case, the number of ballots spoiled during the election and the number of ballots not voted. All unused ballots shall at the same time be returned to the clerk of the county commission, who shall separately package the unused ballots from each precinct, mark the name and number of the precinct on the package and retain them securely along with other election materials.

Each commissioner who is a member of an election board which fails to account for every ballot delivered to it is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000 or confined in the county jail for not more than one year, or both fined and imprisoned.

The board of ballot commissioners of each county, or the chairman thereof, shall preserve the ballots that are left over in their hands, after supplying the precincts as provided, until twenty-two months after the election.

WV Legislature

§3-1-37. Restrictions on presence and conduct at polls.

(a) Except as otherwise provided in this section, no person, other than the election officers and voters going to the election room to vote and returning therefrom, may be or remain within one hundred feet of the outside entrance to the building housing the polling place while the polls are open. This subsection does not apply to persons who reside or conduct business within such distance of the entrance to the building housing the polling place, while in the discharge of their legitimate business, or to persons whose business requires them to pass and repass within one hundred feet of such entrance.

(b) A person who is delivering a voter to a polling place by motor vehicle may drive such vehicle to a convenient and accessible location to discharge the voter, notwithstanding that the location is within one hundred feet of the outside entrance to the building housing the polling place. Upon discharging such voter from the vehicle, the person shall remove the vehicle from within one hundred feet of the entrance until such time as the voter is to be transported from the polling place or another voter delivered: Provided, That vehicles delivering voters who require assistance by reason of blindness, disability or advanced age may remain within one hundred feet of the entrance until such time as the voter is to be transported from the polling place.

(c) The election commissions shall limit the number of voters in the election room so as to preserve order. No person may approach nearer than five feet to any booth or compartment while the election is being held, except the voters to prepare their ballots, or the poll clerks when called on by a voter to assist in the preparation of his or her ballot, and no person, other than election officers and voters engaged in receiving, preparing and depositing their ballots, may be permitted to be within five feet of any ballot box, except by authority of the board of election commissioners, and then only for the purpose of keeping order and enforcing the law.

(d) Not more than one person may be permitted to occupy any booth or compartment at one time. No person may remain in or occupy a booth or compartment longer than may be necessary to prepare his or her ballot, and in no event longer than five minutes, except that any person who claims a disability pursuant to section thirty-four of this article shall have additional time up to ten additional minutes to prepare his or her ballot. No voter, or person offering to vote, may hold any conversation or communication with any person other than the poll clerks or commissioners of election, while in the election room.

(e) The provisions of this section do not apply to persons rendering assistance to blind voters as provided in section thirty-four of this article or to any child fourteen years of age or younger who accompanies a parent, grandparent or legal guardian who is voting. Any dispute concerning the age of a child accompanying a parent, grandparent or legal guardian who is voting shall be determined by the election commissioners.

WV Legislature

§3-1-38. Disorder at polls; procedure.

The commissioners of election shall preserve order at, and in the vicinity of, the polls, and keep the way to the polls open and free from obstruction, and may direct disorderly persons to be removed therefrom, and, if necessary and proper, to be taken and held in custody until sunrise of the next day, or for any shorter time, which may be done by any sheriff or constable or other person or persons designated by the commissioners of election. For such purpose no warrant or authority in writing shall be necessary. The jail of the county or other place designated by the commissioners of election may be used as the place of custody. But any person so arrested shall have an opportunity to vote, if he be entitled to do so, before he shall be committed to jail, if he so desires and shall be prepared to do so promptly.

WV Legislature

§3-1-39. Illegal voting; affidavit; procedure.

(a) If at any time during the election any qualified voter shall appear at the polls for the purpose of stating that any person who has voted is an illegal voter in the precinct, that person shall be admitted to the election room and shall appear before a commissioner of election to make an affidavit explaining why he or she believes the accused to be an illegal voter.

(b) All affidavits alleging illegal voting shall be placed in a strong and durable envelope by the commissioners of election. The envelope shall be securely sealed and each of the commissioners shall endorse his or her name on the back of the envelope. At the close of the count the envelope shall be delivered to the clerk of the circuit court in accordance with section sixteen, article five of this chapter and section eight, article six of this chapter. The clerk of the circuit court shall carefully preserve the envelope containing the affidavits and deliver it, with the seal unbroken, to the prosecuting attorney in the county. The prosecuting attorney shall proceed as if it had been made before him or her.

WV Legislature

§3-1-40.

Repealed.

Acts, 2003 Reg. Sess., Ch. 100.

WV Legislature

§3-1-41. Challenged and provisional voter procedures; counting of provisional voters' ballots; ballots of election officials.

(a) It is the duty of the members of the receiving board, jointly or severally, to challenge the right of any person requesting a ballot to vote in any election:

(1) If the person's registration record is not available at the time of the election;

(2) If the signature written by the person in the poll book does not correspond with the signature purported to be his or hers on the registration record;

(3) If the registration record of the person indicates any other legal disqualification;

(4) If the person fails to present a valid identifying document pursuant to section 34 of this article; or

(5) If any other valid challenge exists against the voter pursuant to section 10, article three of this chapter.

(b) Any person challenged shall nevertheless be permitted to vote in the election. He or she shall be furnished an official ballot not endorsed by the poll clerks. In lieu of the endorsements, the poll clerks shall complete and sign an appropriate form indicating the challenge, the reason therefor, and the name or names of the challengers. The form shall be securely attached to the voter's ballot and deposited together with the ballot in a separate box or envelope marked "provisional ballots".

(c) At the time that an individual casts a provisional ballot, the poll clerk shall give the individual written information stating that an individual who casts a provisional ballot will be able to ascertain under the free access system established in this section whether the vote was counted and, if the vote was not counted, the reason that the vote was not counted.

(d) Before an individual casts a provisional ballot, the poll clerk shall provide the individual written instructions, supplied by the board of ballot commissioners, stating that if the voter is casting a ballot in the incorrect precinct, the ballot cast may not be counted for that election: *Provided*, That if the voter is found to be in the incorrect precinct, then the poll worker shall attempt to ascertain the appropriate precinct for the voter to cast a ballot and immediately give the voter the information if ascertainable.

(e) Provisional ballots may not be counted by the election officials. The county commission shall, on its own motion, at the time of canvassing of the election returns, sit in session to determine the validity of any challenges according to the provisions of this chapter. If the county commission determines that the challenges are unfounded, each provisional ballot of each challenged voter, if otherwise valid, shall be counted and tallied together with the regular ballots cast in the election. The county commission, as the board of canvassers, shall protect the privacy of each provisional ballot cast. The county commission shall disregard technical errors, omissions or oversights if it can reasonably be ascertained that the

WV Legislature

challenged voter was entitled to vote.

(f) Any person duly appointed as an Election Commissioner or clerk under the provisions of section 28 of this article who serves in that capacity in a precinct other than the precinct in which the person is legally entitled to vote may cast a provisional ballot in the precinct in which the person is serving as a commissioner or clerk. The ballot is not invalid for the sole reason of having been cast in a precinct other than the precinct in which the person is legally entitled to vote. The county commission shall record the provisional ballot on the voter's permanent registration record: *Provided*, That the county commission may count only the votes for the offices that the voter was legally authorized to vote for in his or her own precinct.

(g) The Secretary of State shall establish a free access system, which may include a toll-free telephone number or an Internet website, that may be accessed by any individual who casts a provisional ballot to discover whether his or her vote was counted and, if not, the reason that the vote was not counted.

(h) During the early in-person voting period, and in the case of a voter’s address change within the county, the voter may vote in the precinct serving their new address without casting a provisional ballot if the voter shows proof of new address and the change is completed in the state-wide voter registration system by the county clerk prior to canvass.

WV Legislature

§3-1-42. Time off for voting.

Every person entitled to vote at any election who may be employed by any person, company, or corporation on the day on which such election shall be held in this state, shall, on written demand of such employee, made at least three days prior thereto, be given a period of not more than three hours, if necessary, between the opening and the closing of the polls on such day, for the purpose of enabling such person to repair to the place of voting to cast his vote and return, without liability to any penalty or deduction from his usual salary or wages on account of such absence, except that any employee, who has three or more hours of his own time away from his work or place of employment at any time between the hours of the opening and the closing of the polls on election day and who fails or neglects to vote or elects not to vote during such free time away from his work or employment, may be subject to wage or salary deductions for the time actually absent from his work or employment for voting in such election.

In essential government, health, hospital, transportation and communication services and in production, manufacturing and processing works requiring continuity in operation, the employer may, upon receipt of such written demand for voting time off, arrange and schedule a calendar of time off for any and all of his employees for voting so as to avoid impairment or disruption of essential services and operations, but every such schedule or calendar of time off for voting so arranged shall provide ample and convenient time and opportunity for each employee of such services or works to cast his vote as herein provided.

WV Legislature

§3-1-43. Disposition of miscellaneous election papers.

At the expiration of twenty-two months after any election, the affidavits taken and returned by any registrar or any election officer, applications for absent voters' ballots, rejected absent voters' ballots, certificates of nominations of candidates, and the written designations of election officers and of ballot commissioners shall be destroyed. If the further preservation of any of the documents mentioned in this section shall be required by the order of the court, the same shall be destroyed at the expiration of the time fixed for the further preservation thereof by such order.

WV Legislature

§3-1-44. Compensation of election officials; expenses.

(a) Each ballot commissioner is to be paid a sum, to be fixed by the county commission, for each day he or she serves as ballot commissioner, but in no case may a ballot commissioner receive allowance for more than 10 days' services for any one primary, general, or special election.

(b) Each commissioner of election and poll clerk is to be paid a sum, to be fixed by the county commission, for one day's services for attending the school of instruction for election officials if the commissioner provides one day's service, or the poll clerk provides at least one half day's service during an election and a sum for his or her services at any one election: *Provided*, That each commissioner of election and poll clerk is to be paid a sum for his or her services at any of the three special elections described in §3-1-44(g) of this code.

(c) Each alternate commissioner of election and poll clerk may be paid a sum, to be fixed by the county commission, for one day's services for attending the school of instruction for election officials: *Provided*, That no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official or is instructed to attend and actually attends training as an alternate and is available to serve on election day.

(d) The commissioners of election or poll clerks obtaining and delivering the election supplies, as provided in §3-1-24 of this code, and returning them, as provided in §3-5-1 *et seq.* and §3-6-1 *et seq.* of this code, are to be paid an additional sum, fixed by the county commission, for his or her services pursuant to this subsection at any one election. In addition, he or she is to be paid mileage up to the rate of reimbursement authorized by the travel management rule of the Department of Administration for each mile necessarily traveled in the performance of his or her services.

(e) The compensation of election officers, cost of printing ballots and all other expenses incurred in holding and making the return of elections, other than the three special elections described in §3-1-44(f) of this code, are to be audited by the county commission and paid out of the county treasury.

(f) All persons within a class of election officials, as classified in this section, shall be paid the same amount within the county.

(g) The compensation of election officers, cost of printing ballots, and all other reasonable and necessary expenses in holding and making the return of a special election for the purpose of taking the sense of the voters on the question of calling a constitutional convention, of a special election to elect members of a constitutional convention, and of a special election to ratify or reject the proposals, acts, and ordinances of a constitutional convention are obligations of the state incurred by the ballot commissioners, clerks of the circuit courts, clerks of the county commissions, and county commissions of the various counties as agents of the state. All expenses of these special elections are to be audited by

WV Legislature

the Secretary of State. The Secretary of State shall prepare and transmit to the county commissions forms on which the county commissions shall certify all expenses of these special elections to the Secretary of State. If satisfied that the expenses as certified by the county commissions are reasonable and were necessarily incurred, the Secretary of State shall requisition the necessary warrants from the Auditor of the state to be drawn on the state Treasurer and shall mail the warrants directly to the vendors of the special election services, supplies, and facilities.

(h) Notwithstanding the authority granted to county commissions to set compensation for election officials in this section, the Secretary of State may set maximum rates of compensation of the election officials identified in this section at any election for which the obligations incurred by the ballot commissioners, clerks of the county commissions, and county commissions of the various counties are determined to be obligations of the state.

WV Legislature

§3-1-45. Court proceedings to compel performance of duties, etc.

Any officer or person upon whom any duty is imposed by this chapter may be compelled to perform his or her duty by writ of mandamus. The circuit courts, or the judges thereof in vacation, shall have jurisdiction by writ and shall, upon affidavit filed showing a proper case, issue a writ to be returned, heard and determined within fifteen days from the commencement of the proceedings. If a circuit court, or a judge thereof in vacation, shall proceed against any board of canvassers by mandamus, or otherwise, to control, in any manner, the action of the board in the performance of its duties, under the provisions of this article, in any case concerning the election of a member of the House of Delegates, or a state senator, and shall fail to enter a final order in the proceedings, settling all questions presented therein within fifteen days from the commencement of the proceedings, unless delayed by proceedings in the Supreme Court of Appeals, or a judge thereof in vacation, the writ shall be dismissed. The board shall convene within not less than five days thereafter and proceed forthwith to the performance of its duties under the provisions of this article. A mandamus shall lie from the Supreme Court of Appeals, or any one of the judges thereof in vacation, returnable before court, to compel any officer herein to do and perform legally any duty required of him or her. In an election of a member of the House of Delegates and state senator, a writ of certiorari, mandamus or prohibition shall lie from the Supreme Court of Appeals, or a judge thereof in vacation, returnable before the court, to correct any error of law and review and correct the proceedings of any circuit court, or the judge thereof in vacation, or any board of canvassers. When any rule to show cause why a writ of mandamus, prohibition or certiorari is issued by the court, or a judge thereof in vacation, it shall be the duty of the court to convene in special session at the state capital, not later than ten days from the date of the writ, to hear and determine all matters arising upon the writ. The issues raised in the petition for a writ of mandamus, prohibition or certiorari shall have precedence over all other business pending before the court. The issues before the court shall be determined within five days from the assembling of the court and, in any case, in ample time for the case to be remanded and final action taken by the circuit court and the board of canvassers in order that the board may perform its duty and issue the certificate of election before the second Wednesday in January, then next following. Mandamus and prohibition proceedings under this section may be upon affidavit alone.

WV Legislature

§3-1-46. Training program for election officials.

(a) The Secretary of State in conjunction with the state Election Commission shall produce one or more audio-visual programs which explain and illustrate the procedures for conducting elections, the duties of the various election officials and the methods of voting on each voting system in use in the state.

(b) One copy of the appropriate training program shall be distributed to and kept and preserved by the clerk of the county commission of each county. The program shall be shown to all election officials before each election as part of their instructional program. The clerk of the county commission shall conduct an adequate number of sessions to train all election officials, shall schedule the regular sessions not less than seven days before each election and shall notify all election officials of the exact date, time and place such instructional program will be conducted.

(c) No person may serve as an election commissioner or poll clerk in any election unless he or she has attended the instructional program required by subsection (a) of this section within thirty days prior to an election. If an election official fails to attend the instructional program, another person shall be appointed in the election official's place in the same manner as persons are appointed under the provisions of section thirty of this article to replace election officials refusing to serve. The clerk of the county commission shall conduct an additional instructional program within seven days prior to the election for any such person so appointed: Provided, That in cases of emergency, when no person who has attended the instructional program for that election is available to fill a vacancy on the election board, the clerk of the county commission may appoint the substituted person as a commissioner or poll clerk notwithstanding that he or she has not received the instruction.

(d) The requirements of this section apply to all elections conducted by municipalities, except that the recorder or municipal clerk responsible for the election shall perform the duties of the clerk of the county commission defined in this section. The clerk of the county commission may assist the recorder or municipal clerk in conducting the instructional program.

(e) When the instructional program is not being used by the clerk for instructional purposes, it shall be available to any duly organized civic, religious, educational or charitable group without charge, except that the clerk shall require a cash deposit on such use in an amount to be determined by the Secretary of State.

(f) The Secretary of State shall cause the instructional program to be amended, edited or reproduced whenever he or she is of the opinion such revision is necessary in light of changes in the election laws of this state.

(g) No elected official may appear in any training program either in person or by visual image or by name.

WV Legislature

(h) Every county clerk shall attend a training, to be conducted by the Secretary of State every two years, for the purpose of reviewing the election official training and receiving updates on election law matters.

WV Legislature

§3-1-47.

Repealed.

Acts, 1991 Reg. Sess., Ch. 68.

WV Legislature

§3-1-48. Legislative findings; State Election Fund; loans to counties; availability of funds; repayment of loans; grants to counties for election systems; Secretary of State expenditures from County Assistance Voting Equipment Fund.

(a) Legislative findings. — The Help America Vote Act of 2002, PL 107-252, 52 U.S.C. §20901 *et seq*., provides funding so that all states will be able to implement some form of electronic voting system to replace punch card and lever machines. The new voting systems must meet several requirements including notifying the voter of over votes and permitting each voter to review his or her ballot and correct errors before casting the vote. The limited, finite funding available to the state will not be sufficient to meet current and future needs for equipment and services as equipment needs to be obtained, repaired, or replaced as technology changes. It is the intent of the Legislature to maximize the available funds by establishing a no-interest loan program to assist any county, regardless of its current voting system, in purchasing necessary electronic voting equipment and services. As the loans are repaid funds will continue to be available to meet future needs. It is not the intent of the Legislature to mandate any technology for voting systems to be utilized in this state and this section is intended only to establish terms and conditions for providing loan assistance to counties in accordance with the provisions of this section.

(b) State Election Fund. — The special revenue account created in the State Treasury and known as the State Election Fund account is continued. Expenditures from the account shall be used by the Secretary of State for the administration of this chapter in accordance with the provisions of 52 U.S.C. § 20901 *et seq*., the Help America Vote Act of 2002, PL 107-252, in accordance with the provisions of §4-11-1 *et seq*. of this code.

(c) Establishment of special revenue account. — There is created in the State Treasury a special revenue revolving fund account known as the County Assistance Voting Equipment Fund which shall be an interest-bearing account. The fund shall consist of an initial transfer not to exceed $8,500,000 from the State Election Fund established under §3-1-48(b) of this code pursuant to legislative appropriation; any future funds received from the federal government under the Help America Vote Act of 2002, PL 107-252, 52 U.S.C. § 20901, *et seq*., or subsequent acts providing funds to states to obtain, modify, or improve voting equipment and obtain necessary related services including voting systems, technology, and methods for casting and counting votes; any funds appropriated by the Legislature or transferred by any public agency as contemplated or permitted by applicable federal or state law; and any accrued interest or other return on the moneys in the fund. The balance remaining in the fund at the end of each fiscal year shall remain in the fund and not revert to the State General Revenue Fund.

(d) Use of funds. — The money in the fund shall be used only in the manner and for the purposes prescribed in this section. Notwithstanding any provision of law to the contrary, funds in the County Assistance Voting Equipment Fund may not be designated or transferred for any purpose other than those set forth in this section.

(e) Administration of the fund. — The Secretary of State shall administer the fund with the

approval of the State Election Commission.

(f) Investment of fund. — The moneys of the fund shall be invested pursuant to §12-6-1 *et seq*. of this code and in such a manner that sufficient moneys are available as needed for loans authorized under this section.

(g) Loans to counties. — The county assistance voting equipment fund shall be used to make no-interest loans to counties to obtain, modify, or replace voting equipment, software, and necessary related services including voting systems, technology, and methods for casting and counting votes: *Provided*, That any county commission that purchased an electronic voting system prior to November 13, 2004, is eligible to apply for matching funds under this section to upgrade the system: *Provided, however*, That matching funds available for an upgrade shall not exceed the amount available under §3-1-48(g)(1) of this code for the purchase of a new electronic voting system under the Secretary of State's authorized contract. The loans shall be made under the following terms and conditions:

(1) The State Election Commission shall, subject to availability of funds, loan no more than 50 percent of the cost of the voting equipment or services to any county commission: *Provided*, That a portion or all of the county matching requirement may be waived in limited circumstances as determined by the State Election Commission pursuant to this section.

(2) The county commission shall provide sufficient documentation to establish to the satisfaction of the State Election Commission that the county commission has at least 50 percent of the money necessary to obtain the voting equipment, software, or services for which the loan is sought.

(3) The county commission shall enter into a contract with the State Election Commission for the repayment of the loan over a period not to exceed five years or the length of the contract to obtain the equipment, software, or services, whichever is less.

(4) The county commission shall use the loan for voting equipment and services certified by the State Election Commission pursuant to the provisions of §3-4a-1 *et seq*. of this code and authorized for use by the Secretary of State.

(5) A county commission may apply for a loan on a form provided by the Secretary of State. The form shall, in addition to requesting information necessary for processing the application, state the deadline for submitting the application and the eligibility requirements for obtaining a loan.

(6) The State Election Commission may waive a portion or all of the matching money required by this subsection for a county commission that can establish that it has exercised due diligence in raising its share of the costs but has been unable to do so. On forms provided by the Secretary of State the county commission shall request a waiver and shall make a full financial disclosure of its assets and liabilities as well as potential for future income when applying for a waiver. The county commission shall demonstrate, to the

WV Legislature

satisfaction of the State Election Commission, its inability to meet the matching requirements of this subsection and its ability to repay the loan in a timely manner. Notwithstanding the provisions of §3-1-48(g)(3) of this code, the State Election Commission may extend the repayment period on a year-to-year basis for a repayment period not to exceed five additional years.

(h) Application. — An application for a loan shall be approved by the State Election Commission if the requirements of this section have been met.

(i) Rulemaking. — The Secretary of State shall promulgate in accordance with §29A-3-1 *et seq*. of this code emergency and legislative rules necessary to effectuate the purposes of this section.

(j) Availability of loans. — The State Election Commission may not approve a loan under this section until final standards for electronic voting equipment with a voter verified paper ballot have been established by the Secretary of State or the National Institute for Standards and Technology. The State Election Commission may not approve a loan for the purchase, lease, rental, or other similar transaction to obtain electronic voting equipment, software, or necessary related services unless obtained under a contract authorized by the Secretary of State pursuant to rules promulgated under this section.

(k) Repayment of loans. — The Secretary of State may, by civil action, mandamus, or other judicial or administrative proceeding, compel performance by a county commission of all the terms and conditions of the loan agreement between the state and that county commission including periodic reduction of any moneys due the county from the state.

(l) Notwithstanding the provisions of this section relating to loan procedures, the State Election Commission may, with a recommendation from the HAVA Grant Board, and consistent with the legislative rules of the program, approve a grant to a county for the purchase of election systems, or election system upgrades, payable from the County Assistance Voting Equipment Fund: *Provided*, That the Secretary of State shall promulgate emergency rules setting forth the criteria for the issuance of grants to the counties pursuant to the provisions of §29A-3-15 of this code.

(m) Notwithstanding the provisions of this section relating to loan or grant procedures, the State Election Commission may, with a recommendation from the HAVA Grant Board or other relevant federal entity and consistent with the legislative and emergency rules of the program, approve expenditures by the Secretary of State, payable from the County Assistance Voting Equipment Fund, for the purchase of election equipment or security upgrades that further the administration of federal elections held in the state, where such expenditures are limited to election equipment, systems, infrastructure, physical and cyber security upgrades, or any other lawful purpose permitted by the pertinent appropriation from Congress: *Provided*, That the State Election Commission shall promulgate emergency rules setting forth the criteria governing the application and approval process for these expenditures by the Secretary of State, pursuant to the provisions of §29A-3-15 of this code.

WV Legislature

§3-1-49. Voting system standards.

(a) In accordance with 42 U. S. C. §1530, et seq., the Help America Vote Act of 2002, Public Law 107-252, each voting system used in an election for federal office shall:

(1) Permit the voter to verify, in a private and independent manner, the votes selected by the voter on the ballot before the ballot is cast and counted;

(2) Provide the voter with the opportunity, in a private and independent manner, to change the ballot or correct any error before the ballot is cast and counted, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error; and

(3) If the voter selects votes for more than one candidate for a single office: (A) Notify the voter that the voter has selected more than one candidate for a single office on the ballot; (B) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and (C) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted: Provided, That a county that uses a paper ballot voting system, a punch card voting system or an optical scan voting system may meet the requirements of this paragraph by establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and providing the voter with instructions on how to correct the ballot before it is cast and counted, including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error.

(4) Ensure that any notification required under this section preserves the privacy of the voter and the confidentiality of the ballot.

(b) Each voting system used in an election for federal office shall produce a record with an audit capacity for the system which shall meet the following requirements:

(1) Produce a permanent paper record with a manual audit capacity for the system; and

(2) Provide the voter with an opportunity to change the ballot or correct any error before the ballot is cast and counted and before the permanent paper record is produced.

(c) Each voting system used in an election for federal office shall be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters: Provided, That the provisions of this subsection may be satisfied through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.

WV Legislature

§3-1-50. Establishment of state-based administrative complaint procedures.

(a) The Secretary of State shall establish and maintain a state-based administrative complaint procedure for complaints received concerning election violations which shall meet the following requirements:

(1) The procedures shall be uniform and nondiscriminatory.

(2) Under the procedures, any person who believes that there is a violation of any provision of this chapter or Title III of the Help America Vote Act, Pub. L. 107-252, including a violation which has occurred, is occurring or is about to occur, may file a complaint.

(3) Any complaint filed under the procedures shall be in writing, notarized and signed and sworn by the person filing the complaint.

(4) The Secretary of State may consolidate complaints filed under this section.

(5) At the request of the complainant there shall be a hearing on the record.

(6) Violations of any provision of this chapter or Title III of the Help America Vote Act, Pub. L. 107-252 shall be punishable in accordance with the provisions of article nine of this chapter.

(7) If, under the procedures, the Secretary of State determines that there is no violation, the Secretary of State shall dismiss the complaint and publish the results of the procedures.

(8) The Secretary of State shall make a final determination with respect to a complaint prior to the expiration of the ninety-day period which begins on the date the complaint is filed unless the complainant consents to a longer period for making a determination.

(9) If the Secretary of State fails to meet the deadline applicable under subdivision (8) of this section, the complaint shall be resolved within sixty days under alternative dispute resolution procedures established for purposes of this section. The record and other materials from any proceedings conducted under the complaint procedures established under this section shall be made available for use under the alternative dispute resolution procedures.

(b) The administrative complaint procedure required by subsection (a) of this section is not applicable if, within thirty days of the filing of the complaint: (1) The Secretary of State initiates an investigation; (2) the Secretary of State determines that the allegations contained in the complaint may result in a finding of a criminal violation; and (3) the Secretary of State determines that the administrative complaint procedure required by this section would endanger or impede the associated criminal investigation: Provided, That within three business days thereafter the Secretary of State shall notify the complainant in writing that the allegations contained in the complaint may result in a finding of a criminal violation and, therefore, the administrative procedure contained in this section is

WV Legislature

inapplicable.

WV Legislature

§3-1-51. Identity verification of voters executing voter identity affidavit.

(a) The clerk of the county commission shall cause a letter to be mailed by first class mail to each voter who executed a voter identity affidavit pursuant to section thirty-four of this article. The letter shall be mailed within sixty days after the election. The clerk shall mark the envelope with instructions to the United States Post Office not to forward the letter and to provide address correction information. The letter shall notify the addressee that a person who did not present a valid identifying document voted using his or her name and address and instruct the addressee to contact the clerk immediately if he or she did not vote. The letter shall also inform the addressee of the procedure for obtaining an identification card from the Division of Motor Vehicles for voting purposes.

(b) The clerk of the county commission shall cause letters mailed pursuant to subsection (a) of this section that are returned as undeliverable by the United States Post Office to be referred to the Secretary of State. The clerk shall also prepare and forward to the Secretary of State a list of all persons who were mailed letters under subsection (a) of this section and who notified the clerk that they did not vote. Upon receipt of notice from a person who receives a letter mailed pursuant to subsection (a) of this section that the person did not vote, or upon receipt of a referral from the clerk, the Secretary of State shall cause an investigation to be made to determine whether fraudulent voting occurred. Beginning July 1, 2019 and each year thereafter, the Secretary of State shall submit a report to the Joint Committee on the Judiciary and the Joint Committee on Government and Finance detailing the results of all investigations of voter identity affidavits, including, but not limited to, the number of investigations, the number of ballots cast, and the number and results of any determinations made regarding fraudulent voting.

WV Legislature

§3-1-52. Ranked-choice voting prohibited.

(a) Definitions:

"Local government" means any municipality, county, school district, special taxing district, or any other regional or local district or unit of government that is governed by one or more elected officials.

"Ranked-choice voting", "cumulative voting", or "instant-runoff voting" means a method of casting and tabulating votes in which:

(1) Voters rank candidates in order of preference;

(2) Tabulation proceeds in rounds such that in each round either a candidate or candidates are elected or the last-place candidate is defeated;

(3) Votes are transferred from elected or defeated candidates to the voters' next ranked candidate or candidates in order of preference; and

(4) Tabulation ends when a candidate receives the majority of votes cast or the number of candidates elected equals the number of offices to be filled.

(b) No state, county, or local elections office may use ranked choice voting or instant runoff voting to conduct an election or nomination of any candidate in this state for any local government, statewide, or federal elective office.

(c) Any existing or future ordinance enacted or adopted by a county, a municipality, or any other local government entity which is in conflict with this section is void.

WV Legislature