

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1941



ENROLLED

SENATE BILL No. 37

(By Mr. Randolph, Wv. President)

PASSED March 1 1941

In Effect 90 days from Passage



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Senate Bill No. 37  
(BY MR. RANDOLPH, MR. PRESIDENT)

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AN ACT to amend and reenact section one, to add section one-a, one-b and one-c, to amend and reenact section two, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter eight, acts of the Legislature first extraordinary session, one thousand nine hundred thirty-three; to add section five-a, to amend and reenact sections eight, nine, and twelve, to add sections twenty-two-a and twenty-three-a to article four; and to add section four-a to article

five, chapter three of the code of West Virginia one thousand nine hundred thirty-one, all relating to the non-partisan nomination and election of school board members.

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

That section one be amended and reenacted, that sections one-a, one-b, and one-c be added, that section two, article five chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter eight, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted; that section five-a be added, that sections eight, nine, and twelve be amended and reenacted, and that sections twenty-two-a and twenty-three-a, article four be amended and reenacted, and that section four-a be added to article five chapter three of the code of West Virginia, one thousand nine hundred thirty-one to read as follows:

## **Chapter 18. Education**

### **Article 5. District Board of Education**

Section 1. *Members; Non-partisan Nomination and*  
2 *Election.* Each county school district shall be under the  
3 supervision and control of a county board of education,

4: which shall be composed of five members, nominated and  
5. elected by the voters of the respective county, without  
6 reference to political party affiliation. No more than two  
7 members shall be elected from the same magisterial  
8 district.

Sec. 1-a. *Eligibility.* No person shall be eligible for  
2 membership on any county board of education who is not  
3 a citizen, resident in such county, or who accepts a position  
4 as teacher in any school district, or who holds membership  
5 in any political party executive committee, or who be-  
6 comes a candidate for or is appointed to any public  
7 office; *Provided, however,* That the foregoing provisions  
8 of this section shall in no manner affect the term of office  
9 of any member of a board of education who holds an un-  
10 expired term under prior existing law, or any person who  
11 shall have been elected such member at the general elec-  
12 tion held on November fifth, one thousand nine hundred  
13 forty.

14 No member of any board of education shall be eligible  
15 for nomination for, or appointment to, any public office,  
16 other than to succeed himself; unless and until his mem-

17 bership on the board has been terminated at or before  
18 the time of his filing for such nomination for, or appoint-  
19 ment to, such public office.

20 For the purposes of this section the term "public office"  
21 shall be construed to include any position of public trust,  
22 responsibility or service in any municipality, county, state,  
23 or federal government, or any subdivision or combined  
24 unit or units thereof, regardless of whether such position  
25 be remunerative or not.

Sec. 1-b. *Term of Office.* At the general election in the  
2 year one thousand nine hundred forty-two, two members  
3 shall be elected for a term of six years and one member for  
4 a term of four years; at the general election in the year  
5 one thousand nine hundred forty-four, two members shall  
6 be elected for a term of six years. As the terms provided  
7 above expire, the offices shall be filled for six year terms.

8 The term of office of any member of any county board of  
9 education shall immediately cease, and a vacancy shall  
10 exist, upon occurrence of ineligibility as prescribed in  
11 section one-a of this article.

12 This section, however, shall in no manner be construed

13 so as to affect the unexpired terms of county school board  
14 members who hold office or were elected under prior exist-  
15 ing law.

Sec. 1-c. *President of Board of Education.* On the  
2 first Monday in July following each general election each  
3 respective board of education shall organize and elect for  
4 a two year term a president from its own membership.

Sec. 2. *Filling Vacancies.* The board shall, by appoint-  
2 ment, fill within thirty days any vacancy that occurs in  
3 its membership. Such appointments shall continue until  
4 the next general election, when the voters shall elect a  
5 successor for the unexpired term. In the event that the  
6 board does not fill the vacancy within thirty days, the  
7 state superintendent of schools shall appoint a person to  
8 fill the vacancy.

### Chapter 3. Elections

#### Article 4. Nomination of Candidates.

Section 5-a. *Announcement of Candidacy for Member-*  
2 *ship on Board of Education.* Any person who is eligible  
3 to hold office as a member of any county board of educa-  
4 tion may, at least thirty days prior to the primary election

5 day; file a certificate with the Clerk of the Circuit Court  
 6 of the county, declaring himself a candidate for the  
 7 nomination of such office and the length of term sought  
 8 for such office. Such certificate shall be substantially in  
 9 the following form:

10 I, \_\_\_\_\_ hereby certify that I  
 11 am a candidate for the non-partisan nomination for mem-  
 12 bership on the \_\_\_\_\_ County Board of Edu-  
 13 cation, and desire my name printed on the ballot to be  
 14 voted at the primary election to be held on the \_\_\_\_\_  
 15 day of \_\_\_\_\_, 19\_\_\_\_; that I am a legally  
 16 qualified voter of the county of \_\_\_\_\_,  
 17 State of West Virginia; that my residence is number  
 18 \_\_\_\_\_ of \_\_\_\_\_ in \_\_\_\_\_  
 19 county in said state; that I am eligible to hold the said  
 20 office; and that I am a candidate for said office in good  
 21 faith.

22 \_\_\_\_\_

23 Candidate

24 Signed and acknowledged before me this \_\_\_\_\_ day  
 25 of \_\_\_\_\_, 19\_\_\_\_\_.

26

27

Signature and official title of

28

person before whom signed. ✓

29

Such announcement shall be signed and acknowledged  
30 by the candidate before some officer qualified to ad-  
31 minister oaths, who shall certify the same.

Sec. 8. *Certification and Posting of Candidacies.* At  
2 least thirty days before the day fixed for the primary  
3 election, the secretary of state shall as provided in this  
4 article arrange a list of names of all the candidates who  
5 have filed announcements with him, and who are en-  
6 titled to have their names printed on the ballot. He  
7 shall forthwith certify the list under his name and the  
8 lesser seal of the State, and file it in his office, and make  
9 and transmit a duplicate thereof by registered mail to  
10 the clerk of the circuit court of each county in the State,  
11 in which such candidate or candidates is or are to be  
12 voted for. He shall also post a duplicate of such list in  
13 a conspicuous place in his office, and keep the same posted  
14 until after the primary election. In case of emergency  
15 the secretary of state may transmit such duplicate list

16 by telegraph. The certificates to be made by the sec-  
17 retary of state shall as herein provided, give the name  
18 and residence of each candidate, the office for which he  
19 is a candidate, the name of the political party, if any,  
20 of which he is a candidate, and upon what ballot or  
21 ballots his name is to be printed.

Sec. 9. *Publication and Printing of Ballots.* At least  
2 twenty-five days before the holding of any primary  
3 election, the ballot commissioners of each county shall  
4 prepare from the lists and certificates of announcements  
5 as provided in this article, a sample official primary  
6 ballot for each party, placing thereon the names of all  
7 the candidates of the respective political party, and, as  
8 the case may be, the non-partisan candidates to be voted  
9 for at such primary election. They shall publish the  
10 same in two issues of a newspaper of general circulation  
11 published in such county and representing such party,  
12 if one there be; if not, then in some other newspaper  
13 published in such county in two issues of such newspaper.  
14 The ballot commissioners shall cause official ballots,  
15 to at least one and one-half times the number of regis-

16 tered voters in each election precinct of each political  
17 party, to be printed and delivered to them for holding  
18 the primary election.

Sec. 12. *Form and Contents of Ballots.* The official  
2 primary ballot shall contain at the left of each column  
3 of names of candidates, a perpendicular column, and shall  
4 be so printed as to leave a square at the left of each  
5 name on the ballot.

6 On such primary ballot, the names of candidates for  
7 president of the United States, for United States senator,  
8 for representatives in Congress, and for delegates and  
9 alternate delegates to the national convention of the  
10 party, shall be placed in the first column of candidates;  
11 the names of candidates for all state offices except judges  
12 of the supreme court of appeals, and all other offices to  
13 be filled by the voters of a political division greater than  
14 a county, including the state executive committee and  
15 excluding judges of the circuit courts, in the second  
16 column. The names of all candidates for county offices,  
17 including members of the house of delegates, and con-  
18 gressional, judicial and senatorial executive committees

19 (except judges of the circuit court, in cases where a single  
20 county constitutes a judicial circuit, and judges of inferior  
21 courts) shall be placed in the third column; and the  
22 names of all candidates for office in the magisterial dis-  
23 tricts, in the fourth column.

24 The face of every primary election ballot shall con-  
25 form as nearly as practicable to that used at the general  
26 election.

27 The secretary of state, or the circuit court clerk, as the  
28 case may be, shall arrange the names of the candidates  
29 to be printed on the ballot in alphabetical order, accord-  
30 ing to the surname, under the title of the respective  
31 offices upon the ballot.

32 Immediately below the space provided on the ballot for  
33 listing the candidates affiliated with the respective politi-  
34 cal party, shall be printed in bold type, the caption, "Non-  
35 partisan Nomination for Candidates for .....  
36 County Board of Education." The names of the candi-  
37 dates for nomination to the respective county board of  
38 education, the length of term for which they announce  
39 their candidacy and the number of candidates for which

40 each person is entitled to vote shall be printed beneath  
41 said caption, without reference to political party affli-  
42 ation.

43 In printing each set of ballots the position of the names  
44 of the candidates shall be changed in each office division  
45 as many times as there are candidates in that office divis-  
46 ion. As nearly as possible an equal number of ballots  
47 shall be printed after each change. In making the  
48 change of position, the printer shall take the line of  
49 type containing the first name in the office division  
50 concerned and place it at the bottom of the list of  
51 names in that division and move up the column so that  
52 the name that before was second shall be first, after the  
53 change. After the ballots are printed they shall be kept  
54 in separate piles, one pile for each change of position,  
55 and shall then be gathered by taking one from each pile.  
56 Sample ballots shall be in the same form as the official  
57 ballot, but the order of the names thereon need not  
58 be alternated.

59 All ballots used in primary elections shall be printed  
60 on paper conforming as nearly as practicable in weight,

61 texture, and color to the samples furnished by the secre-  
62 tary of state, and the paper shall be sufficiently thick so  
63 that the printing cannot be discernible from the back.  
64 On the back of the ballot shall be printed in black ink,  
65 and in plain, legible, black face pica type, the name of  
66 the political party as contained in the heading, followed  
67 by the word "ballot." Under this designation shall be  
68 printed two blank lines followed by the words "poll  
69 clerks."

Sec. 22-a. *Non-Partisan Primary Nominees.* There  
2 shall be no more than two nominees for each position  
3 sought on the respective county board of education ex-  
4 cept in case of a tie vote. The person who receives the  
5 greatest number of votes and the person who receives the  
6 next greatest number of votes for each position to be  
7 voted upon as listed on the ballot shall be deemed nomi-  
8 nated for that respective position: *Provided, That in*  
9 *case there is only one candidate for such a position, that*  
10 *candidate shall be deemed nominated.*

11 If there is more than one position to be filled for the  
12 office of county board of education, the nominations for

13 each additional position shall go to the two persons re-  
14 ceiving the next highest respective number of votes.

Sec. 23-a. *Vacancy or Absence of Nominees in Non-*  
2 *Partisan Primary.* In the event of death, withdrawal or  
3 disqualification of a nominee for any office appearing on  
4 the non-partisan ballot, subsequent to the primary, and  
5 prior to the general election, the person or persons receiv-  
6 ing the next highest respective votes in the primary elec-  
7 tion for the position in question shall be deemed nomi-  
8 nated.

9 If for any reason there are no candidates for nomination  
10 on the non-partisan primary election the procedure as  
11 prescribed in section 23 of this article, for filling vacancies  
12 in party nominations, shall be followed.

**Article 5. Conducting Election. Ascertaining and Certifying  
the Result.**

Sec. 4-a. *Form and Arrangement of Ballots for Election*  
2 *of Members of County Boards of Education.* At every  
3 general election in which members of county boards of  
4 education are to be elected there shall be printed in bold  
5 type on the lower extremity of the official ballot pre-

6 scribed in section four of the article, the caption "Non-  
7 partisan Election of Members of \_\_\_\_\_  
8 County Board of Education." Beneath such caption shall  
9 be printed the names of the nominees for membership  
10 and the term of office sought on the respective county  
11 boards of education without reference to political party  
12 affiliation. In all other matters consistent with the pur-  
13 pose of this Act, the procedures in article five shall apply.

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

*E. H. McKeown*  
.....  
Chairman Senate Committee

*Leon Rice*  
.....  
Chairman House Committee

Originated in the *Senate*.....

Takes effect *90 days from*..... passage

*Abner Belmont*  
.....  
Clerk of the Senate

*Jarvis*  
.....  
Clerk of the House of Delegates

*Byron B. Randolph*  
.....  
President of the Senate

*Malcolm R. Arnold*  
.....  
Speaker House of Delegates

The within *approved*..... this the *14*  
day of *March*, 1941.

*Matthew M. Neely*  
.....  
Governor.

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Filed in the office of the Secretary of State  
of West Virginia. **MAR 17 1941**  
Wm. S. O'RRIEN,  
Secretary of State