

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1951

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ENROLLED

SENATE BILL NO. 246

(By Mr. MP Kowen)

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PASSED March 9, 1951

In Effect Ninety days from Passage



246

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**Senate Bill No. 246**

(By MR. MCKOWN)

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[Passed March 9, 1951; in effect ninety days from passage.]

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AN ACT to repeal sections twenty-two-a and twenty-three-a, article four, and section four-a, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact sections five, five-a, six-a, twelve and twenty-five, article four, chapter three thereof, and to further amend said article four by adding thereto a new section to be designated section five-b, all relating to elections and providing for election of school board members.

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

That sections twenty-two-a and twenty-three-a, article four, and section four-a, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be repealed, and that sections five, five-a, six-a, twelve and twenty-five, article four, chapter three thereof, be amended and reenacted, and that said article four be further amended by adding thereto a new section to be designated section five-b, all to read as follows:

**Article 4. Nomination or Election of Candidates at Primaries.**

Section 5. *Nomination of Candidates for Offices.*—At  
2 each primary election, the candidate or candidates of each  
3 political party for all offices to be filled at the ensuing  
4 general election by the voters of the entire state, of each  
5 congressional district, of each state senatorial district, of  
6 each judicial circuit except the first judicial circuit of  
7 West Virginia, of each county except candidates for the  
8 office of judge of an inferior court in any county in the  
9 first judicial circuit, and of each magisterial district, in  
10 the state, shall be nominated by the voters of the different  
11 political parties, except that no presidential elector shall  
12 be nominated at a primary election. Candidates for the  
13 offices of judge of the circuit and inferior courts of the  
14 first judicial circuit shall continue to be nominated at  
15 party conventions as provided in section twenty-seven of

16 this article, but such section is hereby repealed and super-  
17 ceded by this enactment in so far as it relates to the nomi-  
18 nation of candidates for the office of judge of courts of  
19 record of West Virginia, other than in the first judicial  
20 circuit.

21 In any primary election, the person receiving the  
22 highest number of votes of each political party in all  
23 cases wherein one person only is to be elected, and the  
24 persons receiving the highest number of votes, to the  
25 number to be elected, in all cases in which two or more  
26 persons are to be elected to the same office, in and  
27 throughout the political division in which the person is a  
28 candidate, and voted for as such, shall be nominated as the  
29 party candidate, or candidates, for the office, or offices,  
30 for which they are voted for at the primary election:  
31 *Provided, however,* That with respect to nominations of  
32 commissioners of county courts no two of such commis-  
33 sioners shall be nominated as the party candidates from  
34 the same magisterial district where more than one such  
35 commissioner is to be nominated at any primary election,  
36 and if two or more persons residing in the same district

37 shall in any case receive the greater number of votes  
38 cast at such primary election, then only the one of such  
39 persons receiving the highest number shall be declared  
40 nominated as the candidate of his party, and the person  
41 living in another district who shall receive the next  
42 highest number of votes shall be declared nominated as  
43 the candidate of his party, and so on to the next highest  
44 in another district; and in no event shall any such candi-  
45 date be nominated from the same magisterial district  
46 wherein an already elected or otherwise qualified member  
47 of such county court resides and who will continue to  
48 hold office after the beginning of the term for which such  
49 nomination is made.

Sec. 5-a. *Announcement of Candidacy for Membership*  
2 of *Board of Education*.—Any person who is eligible to  
3 hold office as a member of a county board of education  
4 may, at least thirty days prior to the day fixed for the  
5 primary election, file a certificate with the clerk of the  
6 circuit court of the county, declaring himself a candidate  
7 for election to such office. Such certificate shall be sub-  
8 stantially in the following form:

9 I \_\_\_\_\_, hereby certify that I am a  
 10 candidate for nonpartisan election to membership on the  
 11 \_\_\_\_\_ County Board of Education, and  
 12 desire my name printed on the ballot to be voted at the  
 13 primary election to be held on the \_\_\_\_\_ day of \_\_\_\_\_,  
 14 19\_\_\_\_\_; that I am a legally qualified voter of the county  
 15 of \_\_\_\_\_; State of West Virginia; that the  
 16 address of my residence in \_\_\_\_\_; County is \_\_\_\_\_;  
 17 that I am eligible to hold the office; and that I am a  
 18 candidate therefor in good faith.

19 \_\_\_\_\_

20 Candidate

21 Signed and acknowledged before me this \_\_\_\_\_ day of  
 22 \_\_\_\_\_ 19\_\_\_\_\_.

23 \_\_\_\_\_

24 Signature and official title of

25 Certifying Officer

26 Such announcement shall be signed and acknowledged  
 27 by the candidate before some officer qualified to admin-  
 28 ister oaths, who shall certify the same.

Sec. 5-b. *Election of County Board of Education.*—An

2 election for the purpose of electing members of the county  
3 board of education shall be held on the same date as the  
4 primary elections as now provided by law, but upon a  
5 non-partisan ballot printed for the purpose. In such non-  
6 partisan election the person receiving the highest number  
7 of votes, shall be elected for a long term, and if more than  
8 one is to be elected for a long term, the one receiving the  
9 next highest shall be elected; and if more than two are to  
10 be elected the candidate or candidates receiving the next  
11 highest votes shall be declared elected for any short term  
12 or terms, as the case may be, to fill vacancies; but no more  
13 than two such members shall be elected from the same  
14 magisterial district, and then only when such magisterial  
15 district does not have a hold-over member of said board,  
16 and if such magisterial district has one hold over member  
17 on said board only one member shall be elected as afore-  
18 said; and if more persons from a magisterial district  
19 receive the highest number of votes in said election, then  
20 of such persons only the person or persons having the  
21 highest vote who do not make the aggregate number of  
22 elected members and hold-over members more than two

23 from such magisterial district shall be declared elected,  
24 and the remaining members shall be declared from the  
25 highest from other magisterial districts; and in no event  
26 shall any member be declared elected from the same  
27 magisterial district wherein resides two already elected  
28 or otherwise qualified members of such board who will  
29 continue to hold office after the beginning of the term for  
30 which such election was held.

31 It is declared to be the intent of this statute that any  
32 person declared to be elected under the preceding provi-  
33 sions of the section shall take office as a duly elected mem-  
34 ber or members, even though he, she or they may not  
35 have received a majority or plurality of all votes cast at  
36 such election.

Sec. 6-a. *Filing Fees and Their Disposition.*—Every  
2 person who becomes a candidate for nomination for or  
3 election to office in any primary election, shall, at the  
4 time of filing the certificate of announcement as required  
5 in section five-a or section six of this article, pay a filing  
6 fee as follows:

7 (a) A candidate for president of the United States, for

8 vice president of the United States, for United States  
9 Senator, for member of the United States house of repre-  
10 sentatives, for governor and for all other state elective  
11 offices shall pay a fee equivalent to one per cent of the  
12 annual salary of the office for which the candidate an-  
13 nounces.

14 (b) A candidate for the office of judge of a circuit  
15 court and judge of any court of record of limited juris-  
16 diction shall pay a fee equivalent to one per cent of the  
17 annual salary of the office for which the candidate an-  
18 nounces.

19 (c) A candidate for member of the house of delegates  
20 shall pay a fee of ten dollars, and a candidate for state  
21 senator shall pay a fee of twenty dollars.

22 (d) A candidate for sheriff, prosecuting attorney, cir-  
23 cuit clerk, county clerk, assessor, member of the county  
24 court and member of the county board of education shall  
25 pay a fee equivalent to one per cent of the annual salary  
26 of the office for which the candidate announces: *Provided,*  
27 *however,* That the fee in no case shall be less than five

28 dollars. A candidate for any other county office shall pay  
29 a fee of five dollars.

30 (e) A candidate for justice of the peace in districts  
31 having a population of five thousand or less shall pay a  
32 fee of ten dollars; in districts having a population of more  
33 than five thousand and not more than twenty-five thou-  
34 sand, fifteen dollars; and in districts having more than  
35 twenty-five thousand population each candidate shall  
36 pay a fee of twenty-five dollars.

37 (f) A candidate for constable in districts having a pop-  
38 ulation of five thousand or less shall pay a fee of five dol-  
39 lars; in districts having a population of more than five  
40 thousand and not more than twenty-five thousand, ten  
41 dollars; and in all other districts fifteen dollars.

42 (g) Delegates and alternate delegates to the national  
43 convention of any political party shall pay the following  
44 filing fees:

45 A candidate for delegate-at-large shall pay a fee of  
46 twenty dollars; a candidate for alternate delegate-at-large  
47 shall pay a fee of ten dollars; a candidate for delegate  
48 from a congressional district shall pay a fee of ten dollars;

49 and a candidate for alternate delegate from a congres-  
50 sional district shall pay a fee of five dollars.

51 (h) Candidates for members of political executive  
52 committees and other political committees shall pay the  
53 following filing fees:

54 A candidate for member of a state executive committee  
55 of any political party shall pay a fee of ten dollars; a  
56 candidate for member of a county executive committee  
57 of any political party shall pay a fee of one dollar; and a  
58 candidate for member of a congressional, senatorial or  
59 judicial committee of any political party shall pay a fee  
60 of one dollar.

61 Candidates filing for an office to be filled by the voters  
62 of one county shall pay the filing fee to the clerk of the  
63 circuit court, and candidates filing for an office to be  
64 filled by the voters of more than one county shall pay the  
65 filing fee to the secretary of state at the time of filing  
66 their certificates of announcement, and no certificate of  
67 announcement shall be received until the filing fee is  
68 paid.

69 All moneys received by the circuit clerk from such fees

70 shall be credited to the general county fund. Moneys re-  
71 ceived by the secretary of state from fees paid by candi-  
72 dates for offices to be filled by all the voters of the state  
73 shall be deposited in a special fund for that purpose and  
74 shall be apportioned and paid by him to the several  
75 counties on the basis of population, and that received  
76 from candidates from a district or judicial circuit of  
77 more than one county shall be apportioned to the counties  
78 comprising the district or judicial circuit in like manner.  
79 When such moneys are received by sheriffs, it shall be  
80 credited to the general county fund.

Sec. 12. *Form and Contents of Ballots.*—The official  
2 primary ballot shall contain at the left of each column of  
3 names of candidates, a perpendicular column, and shall  
4 be so printed as to leave a square at the left of such name  
5 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 representative in congress, and for delegates and al-  
9 ternate delegates to the national convention of the party,  
10 shall be placed in the first column of candidates; the

11 names of candidates for all state offices, and all other  
12 offices to be filled by the voters of a political division  
13 greater than a county, including the state executive com-  
14 mittee by excluding candidates for offices of judge of the  
15 first judicial circuit, in the second column; the names of  
16 all candidates for county offices, including members of  
17 the house of delegates, and congressional, judicial and  
18 senatorial executive committees but excluding candidates  
19 for the office of judge of any inferior court of record in  
20 any county of the first judicial circuit, shall be placed  
21 in the third column, and the names of all candidates for  
22 office in the magisterial districts shall be placed in the  
23 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 to  
29 be printed on the ballot in alphabetical order, according  
30 to the surname, under the title of the respective offices  
31 upon the ballot.

32 A separate ballot, in connection with primary election,  
33 for election of members of county board of education,  
34 shall be printed in bold type, under the caption, "Non-  
35 partisan Ballot for Election of Members of the -----  
36 County Board of Education." The names of the candidates  
37 for election to the county board of education, and the  
38 number of candidates for which each voter is entitled to  
39 vote shall be printed beneath the caption, without refer-  
40 ence to political party affiliation, and without designation  
41 as to a particular term of office.

42 In printing each set of ballots the position of the names  
43 of the candidates shall be changed in each office division  
44 as many times as there are candidates in that office divi-  
45 sion. As nearly as possible an equal number of ballots  
46 shall be printed after each change. In making the change  
47 of position, the printer shall take the line of type con-  
48 taining the first name in the office division concerned and  
49 place it at the bottom of the list of names in that division  
50 and move up the column so that the name that before  
51 was second shall be first after the change. After the bal-  
52 lots are printed they shall be kept in separate piles, one

53 pile for each change in position, and shall then be gathered  
54 by taking one from each pile. Sample ballots shall be in  
55 the same form as the official ballot, but the order of the  
56 names thereon need not be alternated.

57 All ballots used in primary elections shall be printed  
58 on paper conforming as nearly as practicable in weight,  
59 texture, and color to the samples furnished by the secre-  
60 tary of state, and the paper shall be sufficiently thick so  
61 that the printing cannot be discernible from the back.  
62 On the back of the ballot shall be printed in black ink,  
63 and in plain, legible, black face pica type, the name of the  
64 political party as contained in the heading or "Nonpar-  
65 tisan Board of Education", as the case may be, followed  
66 by the word "ballot". Under this designation shall be  
67 printed two blank lines followed by the words "poll  
68 clerks".

Sec. 25. *Contests; Review by the Courts.*—Any candi-  
2 date for nomination for or election to an office to be filled  
3 by the voters of a county, school district or of a magisterial  
4 district, or any candidate for membership on any county  
5 political executive committee, may contest the primary

6 election before the county court of the county. The pro-  
7 cedure in such case shall be the same as that governing  
8 the contest of a general election by candidates for county  
9 offices or offices in school districts or magisterial districts.  
10 The decision of the county court upon such contest may  
11 be reviewed by the circuit court of the county and by the  
12 supreme court of appeals of the state.

13 Any action of a political party executive committee in  
14 the discharge of any of the duties imposed upon such  
15 committee by this article, or of any board of election  
16 officials in conducting and ascertaining the result of the  
17 primary election, or of any board of canvassers in can-  
18 vassing and certifying the result of the primary election  
19 for the county, may be reviewed by the circuit court of  
20 the county, upon the petition of any candidate, political  
21 committeeman or delegate voted for at such primary and  
22 affected adversely by the action of such committee,  
23 board of election officials, or board of canvassers. From  
24 the judgment of the circuit court in any such proceeding,  
25 an appeal shall lie to the supreme court of appeals of the  
26 state.

27 Any such contest, or petition for review, of a candidate  
28 for a nomination not finally determined within ten days  
29 next preceding the date of the next election after the  
30 primary, or of a candidate for delegate to any convention  
31 within ten days next preceding the date fixed for holding  
32 the convention, shall stand dismissed, and the person  
33 shown by the face of the returns of the primary election  
34 to be nominated for any office shall be entitled to have  
35 his name printed upon the regular ballot to be voted at  
36 the election, and the person shown upon the face of the  
37 returns to have been elected as a delegate to any conven-  
38 tion shall be entitled to sit in such convention as a dele-  
39 gate.

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

Robert C. Boyd  
Chairman Senate Committee

James M. Lipp  
Chairman House Committee

Originated in the Senate.

Takes effect Ninety days from passage.

Thomas Meyer  
Clerk of the Senate

J. B. Gliff  
Clerk of the House of Delegates

W. S. Hunter  
President of the Senate

W. E. Ham  
Speaker House of Delegates

The within approved this the 16<sup>th</sup>  
day of March, 1951.

Okuy L. Patterson  
Governor.



FROM THE OFFICE OF THE SECRETARY OF STATE

West Virginia **MAR 16 1951**  
D. PITT O'BRIEN,  
SECRETARY OF STATE