WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1951

ENROLLED

SENATE BILL NO. 246

(By Mr.)

PASSED March 9, 1951

In Effect Ninety days from Passage
ENROLLED

Senate Bill No. 246
(By Mr. McKown)

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

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be repealed, and that sections five, five-a, six-a, twelve and twenty-five, article four, chapter three thereof, be amended and reenacted, and that said article four be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 each primary election, the candidate or candidates of each political party for all offices to be filled at the ensuing general election by the voters of the entire state, of each congressional district, of each state senatorial district, of each judicial circuit except the first judicial circuit of West Virginia, of each county except candidates for the office of judge of an inferior court in any county in the first judicial circuit, and of each magisterial district, in the state, shall be nominated by the voters of the different political parties, except that no presidential elector shall be nominated at a primary election. Candidates for the offices of judge of the circuit and inferior courts of the first judicial circuit shall continue to be nominated at party conventions as provided in section twenty-seven of
this article, but such section is hereby repealed and super-
ceded by this enactment in so far as it relates to the nomi-
nation of candidates for the office of judge of courts of
record of West Virginia, other than in the first judicial
circuit.

In any primary election, the person receiving the
highest number of votes of each political party in all
cases wherein one person only is to be elected, and the
persons receiving the highest number of votes, to the
number to be elected, in all cases in which two or more
persons are to be elected to the same office, in and
throughout the political division in which the person is a
candidate, and voted for as such, shall be nominated as the
party candidate, or candidates, for the office, or offices,
for which they are voted for at the primary election:
Provided, however, That with respect to nominations of
commissioners of county courts no two of such commis-
sioners shall be nominated as the party candidates from
the same magisterial district where more than one such
commissioner is to be nominated at any primary election,
and if two or more persons residing in the same district
shall in any case receive the greater number of votes cast at such primary election, then only the one of such persons receiving the highest number shall be declared nominated as the candidate of his party, and the person living in another district who shall receive the next highest number of votes shall be declared nominated as the candidate of his party, and so on to the next highest in another district; and in no event shall any such candidate be nominated from the same magisterial district wherein an already elected or otherwise qualified member of such county court resides and who will continue to hold office after the beginning of the term for which such nomination is made.

Sec. 5-a. Announcement of Candidacy for Membership of Board of Education.—Any person who is eligible to hold office as a member of a county board of education may, at least thirty days prior to the day fixed for the primary election, file a certificate with the clerk of the circuit court of the county, declaring himself a candidate for election to such office. Such certificate shall be substantially in the following form:
I hereby certify that I am a candidate for nonpartisan election to membership on the County Board of Education, and desire my name printed on the ballot to be voted at the primary election to be held on the day of , 19 ; that I am a legally qualified voter of the county of ; State of West Virginia; that the address of my residence in ; County is ; that I am eligible to hold the office; and that I am a candidate therefor in good faith.

Candidate

Signed and acknowledged before me this day of , 19 .

Signature and official title of Certifying Officer

Such announcement shall be signed and acknowledged by the candidate before some officer qualified to administer oaths, who shall certify the same.

Sec. 5-b. Election of County Board of Education.—An
election for the purpose of electing members of the county
board of education shall be held on the same date as the
primary elections as now provided by law, but upon a
non-partisan ballot printed for the purpose. In such non-
partisan election the person receiving the highest number
of votes, shall be elected for a long term, and if more than
one is to be elected for a long term, the one receiving the
next highest shall be elected; and if more than two are to
be elected the candidate or candidates receiving the next
highest votes shall be declared elected for any short term
or terms, as the case may be, to fill vacancies; but no more
than two such members shall be elected from the same
magisterial district, and then only when such magisterial
district does not have a hold-over member of said board,
and if such magisterial district has one hold over member
on said board only one member shall be elected as afore-
said; and if more persons from a magisterial district
receive the highest number of votes in said election, then
of such persons only the person or persons having the
highest vote who do not make the aggregate number of
elected members and hold-over members more than two
from such magisterial district shall be declared elected, and the remaining members shall be declared from the highest from other magisterial districts; and in no event shall any member be declared elected from the same magisterial district wherein resides two already elected or otherwise qualified members of such board who will continue to hold office after the beginning of the term for which such election was held.

It is declared to be the intent of this statute that any person declared to be elected under the preceding provisions of the section shall take office as a duly elected member or members, even though he, she or they may not have received a majority or plurality of all votes cast at such election.

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

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

(e) A candidate for justice of the peace in districts having a population of five thousand or less shall pay a fee of ten dollars; in districts having a population of more than five thousand and not more than twenty-five thousand, fifteen dollars; and in districts having more than twenty-five thousand population each candidate shall pay a fee of twenty-five dollars.

(f) A candidate for constable in districts having a population of five thousand or less shall pay a fee of five dollars; in districts having a population of more than five thousand and not more than twenty-five thousand, ten dollars; and in all other districts fifteen dollars.

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

A candidate for delegate-at-large shall pay a fee of twenty dollars; a candidate for alternate delegate-at-large shall pay a fee of ten dollars; a candidate for delegate from a congressional district shall pay a fee of ten dollars;
and a candidate for alternate delegate from a congressional district shall pay a fee of five dollars.

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

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

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

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

Sec. 12. Form and Contents of Ballots.—The official
primary ballot shall contain at the left of each column of
names of candidates, a perpendicular column, and shall
be so printed as to leave a square at the left of such name
on the ballot.
On such primary ballot, the names of candidates for
president of the United States, for United States senator,
for representative in congress, and for delegates and al-
ternate delegates to the national convention of the party,
shall be placed in the first column of candidates; the
names of candidates for all state offices, and all other offices to be filled by the voters of a political division greater than a county, including the state executive committee by excluding candidates for offices of judge of the first judicial circuit, in the second column; the names of all candidates for county offices, including members of the house of delegates, and congressional, judicial and senatorial executive committees but excluding candidates for the office of judge of any inferior court of record in any county of the first judicial circuit, shall be placed in the third column, and the names of all candidates for office in the magisterial districts shall be placed in the fourth column.

The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

The secretary of state, or the circuit court clerk, as the case may be, shall arrange the names of the candidates to be printed on the ballot in alphabetical order, according to the surname, under the title of the respective offices upon the ballot.
A separate ballot, in connection with primary election, for election of members of county board of education, shall be printed in bold type, under the caption, "Non-partisan Ballot for Election of Members of the County Board of Education." The names of the candidates for election to the county board of education, and the number of candidates for which each voter is entitled to vote shall be printed beneath the caption, without reference to political party affiliation, and without designation as to a particular term of office.

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

All ballots used in primary elections shall be printed
on paper conforming as nearly as practicable in weight,
texture, and color to the samples furnished by the secre-
tary of state, and the paper shall be sufficiently thick so
that the printing cannot be discernible from the back.

On the back of the ballot shall be printed in black ink,
and in plain, legible, black face pica type, the name of the
political party as contained in the heading or “Nonpar-
tisan Board of Education”, as the case may be, followed
by the word “ballot”. Under this designation shall be
printed two blank lines followed by the words “poll
clerks”.

Sec. 25. Contests; Review by the Courts.—Any candi-
date for nomination for or election to an office to be filled
by the voters of a county, school district or of a magisterial
district, or any candidate for membership on any county
political executive committee, may contest the primary
election before the county court of the county. The pro-
cedure in such case shall be the same as that governing
the contest of a general election by candidates for county
offices or offices in school districts or magisterial districts.
The decision of the county court upon such contest may
be reviewed by the circuit court of the county and by the
supreme court of appeals of the state.
Any action of a political party executive committee in
the discharge of any of the duties imposed upon such
committee by this article, or of any board of election
officials in conducting and ascertaining the result of the
primary election, or of any board of canvassers in can-
vassing and certifying the result of the primary election
for the county, may be reviewed by the circuit court of
the county, upon the petition of any candidate, political
committeeman or delegate voted for at such primary and
affected adversely by the action of such committee,
board of election officials, or board of canvassers. From
the judgment of the circuit court in any such proceeding,
an appeal shall lie to the supreme court of appeals of the
state.
Any such contest, or petition for review, of a candidate for a nomination not finally determined within ten days next preceding the date of the next election after the primary, or of a candidate for delegate to any convention within ten days next preceding the date fixed for holding the convention, shall stand dismissed, and the person shown by the face of the returns of the primary election to be nominated for any office shall be entitled to have his name printed upon the regular ballot to be voted at the election, and the person shown upon the face of the returns to have been elected as a delegate to any convention shall be entitled to sit in such convention as a delegate.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Robert C. Byrd
Chairman Senate Committee

James W. Griffith
Chairman House Committee

Originated in the Senate.

Takes effect [initials] days from passage.

J. T. Mullins
Clerk of the Senate

J. G. Clift
Clerk of the House of Delegates

William B.boutle
President of the Senate

[Signature]
Speaker House of Delegates

The within [initials] approved this the 16th day of March, 1951.

[Signature]
Governor.

[Stamp]
West Virginia MAR 16 1951
D. Pitt O'Brien, Secretary of State