

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1964



ENROLLED

HOUSE BILL No. 4

(Originating in the Committee on the Judiciary)
~~(By Mr. _____)~~



PASSED February 14, 1964

In Effect from Passage



FILED IN THE OFFICE OF
THE CLERK
WEST VIRGINIA LEGISLATURE
2-19-64

4

ENROLLED

House Bill No. 4

(Originating in the Committee on the Judiciary)

[Passed February 14, 1964; in effect from passage.]

AN ACT to amend and reenact section nine, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections four, seven, eight, thirteen and twenty, article five of said chapter; and to amend and reenact section five, article ten of said chapter, relating to the establishment, duties, functioning and election of delegate district executive committees and to the filling of vacancies in the membership of the house of delegates where delegate districts are involved.

Be it enacted by the Legislature of West Virginia:

That section nine, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be amended and reenacted; and that sections four, seven, eight, thirteen and twenty, article five of said chapter be amended and reenacted; and that section five, article ten of said chapter be amended and reenacted, all to read as follows:

Article 1. General Provisions and Definitions.

Section 9. Political Party Committees; How Com-

2 posed; Organization.—At the May primary election in the
3 year one thousand nine hundred sixty-four and in every
4 fourth year thereafter, the voters of each political party
5 in each senatorial district shall elect two male and two
6 female members of the state executive committee of the
7 party. In senatorial districts containing two or more
8 counties, not more than two such elected committee
9 members shall be residents of the same county. The com-
10 mittee, when convened and organized as herein provided,
11 shall appoint three additional members of the committee
12 from the state at large.

13 At such primary election, the voters of each political
14 party in each county shall elect one male and one female
15 member of the party's executive committee of the con-
16 gressional district, of the senatorial district in which such

17 county is situated and of the delegate district in which
18 such county is situated if such county be situated in a
19 delegate district. At the same time such voters in each
20 magisterial district of the county shall elect one male and
21 one female member of the party's county executive com-
22 mittee and, in any county containing a city of ten thou-
23 sand or more in population, such voters of each ward of
24 such city within the county shall elect one male and one
25 female member of such county party executive com-
26 mittee in addition to the members thereof chosen from
27 the magisterial district or districts in which such city is
28 situated.

29 All members of executive committees, selected for each
30 political division as herein provided, shall reside within
31 the county, district, or ward from which chosen.

32 The term of office of all members of executive com-
33 mittees so elected shall begin on the first day of June,
34 following said May primary, and shall continue for four
35 years thereafter and until their successors are elected
36 and qualified. Vacancies in the state executive committee
37 shall be filled by the members of the committee for the

38 unexpired term. Vacancies in the party's executive
39 committee of a congressional district, senatorial dis-
40 trict, delegate district or county shall be filled by the
41 party's executive committee of the county in which such
42 vacancy exists, and shall be for the unexpired term.

43 As soon as possible after the first day of June, follow-
44 ing the election of the new executive committees, as
45 herein provided, they shall convene within their respec-
46 tive political divisions, on the call of the chairman of
47 corresponding outgoing executive committees, or by any
48 member of the new executive committee in the event
49 there is no corresponding outgoing executive committee,
50 and proceed to select a chairman, a treasurer, and a sec-
51 retary, and such other officers as they may desire, each
52 of which officers shall for their respective committees
53 perform the duties that usually appertain to such offices.

Article 5. Primary Elections and Nominating Procedures.

Section 4. Nomination of Candidates in Primary Elec-
2 **tions.**—At each primary election, the candidate or candi-
3 dates of each political party for all offices to be filled at
4 the ensuing general election by the voters of the entire

5 state, of each congressional district, of each state sen-
6 atorial district, of each delegate district, of each judicial
7 circuit of West Virginia, of each county, and of each
8 magisterial district in the state shall be nominated by
9 the voters of the different political parties, except that
10 no presidential elector shall be nominated at a primary
11 election.

12 In primary elections a plurality of the votes cast shall
13 be sufficient for the nomination of candidates for office.
14 Where only one candidate of a political party for any
15 office in a political division, including party committee-
16 men and delegates to national conventions, is to be
17 chosen, the candidate receiving the highest number of
18 votes therefor in the primary election shall be declared
19 the party nominee for such office. Where two or more
20 such candidates are to be chosen in the primary election,
21 the candidates constituting the proper number to be so
22 chosen who shall receive the highest number of votes
23 cast in the political division in which they are candidates
24 shall be declared the party nominees and choices for such
25 office, except that candidates for the office of commis-

26 sioner of the county court shall be nominated and elected
27 in accordance with the provisions of section twenty-three
28 of article eight of the constitution of this state and that
29 members of county boards of education shall be elected
30 at primary elections in accordance with the provisions
31 of section six of this article.

32 In case of tie votes between candidates for party nom-
33 inations or elections in primary elections, the choice of
34 the political party shall be determined by lot by the exe-
35 cutive committee of the party for the political division
36 in which such persons are candidates.

Sec. 7. Filing Announcements of Candidacies; Re-
2 **quirements.**—Any person who is eligible to hold an of-
3 fice (including that of member of any political party
4 executive committee) shall file with the secretary of
5 state, if it be an office to be filled by the voters of
6 more than one county, or with the clerk of the cir-
7 cuit court, if it be for an office to be filled by the
8 voters of a county or subdivision less than a county,
9 a certificate declaring himself a candidate for the nomi-

10 nation for such office; which certificate shall be in form
11 or effect as follows:

12 I, _____, hereby certify that I am a candidate
13 for the nomination for the office of _____ to
14 represent the _____ party, and desire my name
15 printed on the official ballot of said party to be voted at
16 the primary election to be held on the _____ day of
17 _____, 19____; that I am a legally qualified voter
18 of the county of _____, state of West Virginia;
19 that my residence is number _____ of _____
20 street in the city (or town) of _____ in _____
21 county in said state; that I am eligible to hold the said
22 office; that I am a member of and affiliated with said
23 political party; that I am a candidate for said office in
24 good faith.

25 _____
26 Candidate

27 Signed and acknowledged before me this _____ day of
28 _____, 19_____.

29 _____
30 Signature and official title of
31 person before whom signed.

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

35 No person may be a candidate for nomination for office
36 in any political party unless it be openly known that
37 such person is a bona fide member of such party.

38 Such certificate shall be filed with the secretary of
39 state or the clerk of the circuit court, as the case may
40 be, not earlier than the first Monday in January next
41 preceding the primary election day, and not later than
42 the first Saturday of February next preceding the pri-
43 mary election day, and must be received before mid-
44 night, eastern standard time, of that day or, if mailed,
45 shall be postmarked before that hour: *Provided*, That
46 during the calendar year of one thousand nine hundred
47 sixty-four, in event (a) that section one and section two,
48 or either of them (in whole or in part), of article two of
49 chapter one of the code of West Virginia, one thousand
50 nine hundred thirty-one, as amended, said article two
51 having been enacted by chapter one hundred fifty-eight
52 of the acts of the Legislature of West Virginia, for the

53 year one thousand nine hundred sixty-three, regular ses-
54 sion, relating to the apportionment of membership in the
55 Legislature, are declared unconstitutional by the supreme
56 court of appeals of West Virginia, and (b) that there-
57 after the Legislature enacts legislation reapportioning
58 said Legislature prior to the primary election for the
59 year one thousand nine hundred sixty-four the announce-
60 ments of candidacies for membership in the state senate
61 and membership in the house of delegates which were
62 properly filed on or before February one, one thousand
63 nine hundred sixty-four, by any persons under the pro-
64 visions of this section, shall be considered valid and suf-
65 ficient announcements of candidacies for such offices in
66 the counties or districts wherein such candidates reside
67 at the time said certificates of candidacies were filed for
68 membership in the Legislature representing the particular
69 counties, delegate districts or senatorial districts for
70 which filed, as the case may be, or which are created in
71 such apportionment legislation as may hereafter be
72 adopted during the year one thousand nine hundred sixty-
73 four, prior to the primary election: *Provided, however,*

74 That in event such apportionment legislation is hereafter
75 adopted during the year one thousand nine hundred
76 sixty-four prior to the primary election wherein delegate
77 districts are established, the circuit clerks of all counties
78 within such established delegate districts shall immedi-
79 ately transfer all certificates of candidacy for member-
80 ship in the house of delegates, together with the filing
81 fees therefor, to the secretary of state: *Provided further,*
82 That notwithstanding the provisions of section nine, ar-
83 ticle five of this chapter and any other provision of this
84 chapter requiring an earlier date or time, the secretary
85 of state shall arrange the names of all candidates who
86 have filed announcements with him and who are entitled
87 to have their names printed on any political party ballot
88 for the offices of state senator and member of the house
89 of delegates and shall certify the same to the several
90 clerks of the circuit courts prior to the week next follow-
91 ing the second Saturday in the month of March, in the
92 year one thousand nine hundred sixty-four.

93 Notwithstanding the provisions of the preceding para-
94 graph of this section, for the primary election in the year

95 one thousand nine hundred sixty-four any person who is
96 eligible to be a member of a party's delegate district
97 executive committee and who desires to be a candidate
98 therefor shall file with the clerk of the circuit court of
99 the county of which he is a resident, a certificate declar-
100 ing himself a candidate for election to his party's execu-
101 tive committee of the delegate district of which the county
102 of his residence is a part not later than the twenty-ninth
103 day of February, one thousand nine hundred sixty-four,
104 and said certificate must be received before midnight,
105 eastern standard time, of that day or, if mailed, shall be
106 postmarked before that hour.

Sec. 8. Filing Fees and Their Disposition.—Every per-
2 son who becomes a candidate for nomination for or elec-
3 tion to office in any primary election, shall, at the time
4 of filing the certificate of announcement as required in
5 this article, pay a filing fee as follows:

6 (a) A candidate for president of the United States,
7 for vice president of the United States, for United States
8 senator, for member of the United States house of repre-
9 sentatives, for governor and for all other state elective

10 offices shall pay a fee equivalent to one per cent of the
11 annual salary of the office for which the candidate an-
12 nounces;

13 (b) A candidate for the office of judge of a circuit
14 court and judge of any court of record of limited juris-
15 diction shall pay a fee equivalent to one per cent of the
16 total annual salary of the office paid from any and all
17 sources for which the candidate announces;

18 (c) A candidate for member of the house of delegates
19 shall pay a fee of fifteen dollars, and a candidate for state
20 senator shall pay a fee of thirty dollars;

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

29 (e) A candidate for justice of the peace in districts
30 having a population of five thousand or less shall pay a

31 fee of ten dollars; in districts having a population of more
32 than five thousand and not more than twenty-five thou-
33 sand, fifteen dollars; and in districts having more than
34 twenty-five thousand population, each candidate shall
35 pay a fee of twenty-five dollars;

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

41 (g) Delegates to the national convention of any po-
42 litical party shall pay the following filing fees:

43 A candidate for delegate-at-large shall pay a fee of
44 twenty dollars; and a candidate for delegate from a con-
45 gressional district shall pay a fee of ten dollars;

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

49 A candidate for member of a state executive com-
50 mittee of any political party shall pay a fee of ten dol-
51 lars; a candidate for member of a county executive

52 committee of any political party shall pay a fee of one
53 dollar; and a candidate for member of a congressional,
54 senatorial or delegate district committee of any political
55 party shall pay a fee of one dollar.

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

63 All moneys received by such clerk from such fees
64 shall be credited to the general county fund. Moneys
65 received by the secretary of state from fees paid by
66 candidates for offices to be filled by all the voters of the
67 state shall be deposited in a special fund for that pur-
68 pose and shall be apportioned and paid by him to the
69 several counties on the basis of population, and that re-
70 ceived from candidates from a district or judicial circuit
71 of more than one county shall be apportioned to the
72 counties comprising the district or judicial circuit in like

73 manner. When such moneys are received by sheriffs, it
74 shall be credited to the general county fund.

Sec. 13. Form and Contents of Ballots.—Official pri-
2 mary 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 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 representative in congress, and for delegates to the
9 national convention of the party, shall be placed in the
10 first column of candidates; the names of candidates for
11 all state offices, and all other offices to be filled by the
12 voters of a political division greater than a county, in-
13 cluding the state executive committee, in the second
14 column; the names of all candidates for county offices,
15 including members of the house of delegates and con-
16 gressional, senatorial, and delegate district executive
17 committees, shall be placed in the third column; and the
18 names of all candidates for office in the magisterial dis-
19 tricts shall be placed in the fourth column.

20 The face of every primary election ballot shall conform
21 as nearly as practicable to that used at the general elec-
22 tion.

23 The secretary of state, or the circuit court clerk, as
24 the case may be, shall arrange the names of the candi-
25 dates to be printed on the ballot in alphabetical order,
26 according to the surname, under the title of the respec-
27 tive offices upon the ballot.

28 A separate ballot, in connection with a primary elec-
29 tion, for election of members of county board of educa-
30 tion, shall be printed in bold type, under the caption,
31 "Nonpartisan Ballot for Election of Members of the
32 ----- County Board of Education." The names
33 of the candidates for election to the county board of edu-
34 cation, and the number of candidates for which each voter
35 is entitled to vote shall be printed beneath the caption,
36 without reference to political party affiliation, and with-
37 out designation as to a particular term of office.

38 In printing each set of ballots the position of the names
39 of the candidates shall be changed in each office division
40 as many times as there are candidates in that office divi-

41 sion. As nearly as possible an equal number of ballots
42 shall be printed after each change. In making the change
43 of position, the printer shall take the line of type con-
44 taining the first name in the office division concerned and
45 place it at the bottom of the list of names in that division
46 and move up the column so that the name that before
47 was second shall be first after the change. After the
48 ballots are printed they shall be kept in separate piles,
49 one pile for each change in position, and shall then be
50 gathered by taking one from each pile. Sample ballots
51 shall be in the same form as the official ballot, but the
52 order of the names thereon need not be alternated.

53 All ballots used in primary elections shall be printed on
54 paper conforming as nearly as practicable in weight, tex-
55 ture, and color to the samples furnished by the secretary
56 of state, and the paper shall be sufficiently thick so that
57 the printing cannot be discernible from the back. On the
58 back of the ballot shall be printed in black ink, and in
59 plain legible, black face pica type, the name of the politi-
60 cal party as contained in the heading or "Nonpartisan
61 Board of Education," as the case may be, followed by

62 the word "ballot." Under this designation shall be
63 printed two black lines followed by the words "poll
64 clerks."

Sec. 20. Election Contests and Court Review.—Any
2 candidate for nomination for or election to an office to
3 be filled by the voters of the state or any political sub-
4 division thereof or any candidate for membership on any
5 political party executive committee, may contest the
6 primary election before the county court of the county
7 in which any primary election procedures, practices or
8 results may be in issue. The procedure in such case shall
9 be the same as that governing the contest of a general
10 election by candidates for county offices or offices in
11 magisterial districts. The decision of the county court
12 upon such contest may be reviewed by the circuit court
13 of the county and by the supreme court of appeals of
14 the state. Wherever practicable, the circuit court, on
15 review, may, by order entered of record, consolidate and
16 hear together any such primary election cases arising in
17 one or more counties of the circuit, and the supreme
18 court of appeals, on further review, may likewise con-

19 solidate and hear together any such cases whenever con-
20 sidered practicable by the court so to do.

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

35 Any such contest, or petition for review, of a candidate
36 for a nomination not finally determined within ten days
37 next preceding the date of the next election after the
38 primary, or of a candidate for delegate to any conven-
39 tion within ten days next preceding the date fixed for

40 holding the convention, shall stand dismissed, and the
41 person shown by the face of the returns of the primary
42 election to be nominated for any office shall be entitled
43 to have his name printed upon the regular ballot to be
44 voted at the election, and the person shown upon the
45 face of the returns to have been elected as a delegate to
46 any convention shall be entitled to sit in such convention
47 as a delegate.

Article 10. Filling Vacancies.

Section 5. Vacancies in State Legislature.—Any va-
2 cancy in the office of state senator or member of the
3 house of delegates shall be filled by appointment by the
4 governor, in each instance from a list of three legally
5 qualified persons submitted by the county party execu-
6 tive committee in the case of a member of the house of
7 delegates who is elected from a county that is not situ-
8 ated in a delegate district, by the party executive com-
9 mittee of the delegate district in the case of a mem-
10 ber of the house of delegates who is elected from such
11 delegate district, and by the party executive com-
12 mittee of the state senatorial district in the case of

13 a state senator, of the party with which the person
14 holding the office immediately preceding the vacancy was
15 affiliated, and of the county, delegate district or state
16 senatorial district, respectively, in which he resided at
17 the time of his election or appointment. The appoint-
18 ment to fill a vacancy in the house of delegates shall be
19 for the unexpired term. If the unexpired term in the
20 office of the state senator be for less than two years and
21 two months, the appointment shall be for the unexpired
22 term. If the unexpired term be for a period longer than
23 two years and two months, the appointment shall be
24 until the next general election and until the election and
25 qualification of a successor to the person appointed, at
26 which general election the vacancy shall be filled by
27 election for the unexpired term. Notice of an election to
28 fill a vacancy in the office of state senator shall be
29 given by the governor by proclamation and shall be pub-
30 lished once a week for two successive weeks prior to the
31 date of the election, in two newspapers having the largest
32 and second largest circulation, and of opposite party poli-
33 tics, published in each county in the senatorial district.

34 Nominations for candidates to fill such vacancy shall be
35 made in the manner prescribed for nominating a candi-
36 date to fill a vacancy in the office of governor to be voted
37 for at a general election. The state senatorial district ex-
38 ecutive committee of the political party shall discharge
39 the duties incident to state senator nominations devolving
40 upon the party state executive committee in nominating
41 a candidate for a state office.

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

Ray Parker
Chairman Senate Committee

Ethel L. Randall
Chairman House Committee

Originated in the House.

Takes effect from passage.

Howard Myers
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

Julius W. Sipe
Speaker House of Delegates

The within approved this the 19th
day of February, 1964.

W. M. Blanton
Governor

