

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1965



ENROLLED

HOUSE BILL No. 861

(By Mr. Speaker, Mr. White)



PASSED March 12, 1965

In Effect from Passage



FILED IN THE OFFICE OF
JOE F. ENRIGHT
SECRETARY OF STATE
THIS DATE 3-19-65

861

ENROLLED

House Bill No. 861

(By MR. SPEAKER, MR. WHITE)

[Passed March 13, 1965; in effect from passage.]

AN ACT calling a convention having the authority to alter the constitution of the state to convene on the twentieth day of July, one thousand nine hundred sixty-six, in the House of Delegates' chamber in the state capitol, Charleston, West Virginia, but providing that such convention shall not be held unless a majority of the votes cast at the special election therein provided for are in favor of calling the same; providing that polls shall be opened throughout the state on the ninth day of November, one thousand nine hundred sixty-five, for the purpose of taking the sense of the voters on the question of calling a convention having the authority to alter the constitution of the state; providing for pub-

lication of notice of said election and prescribing the form of such notice; providing for the conduct of such special election; prescribing the form of the ballot and the duties of public officers with respect to the official ballot; prescribing the duties of election commissioners and poll clerks with respect to the ascertainment of the results and with respect to certificates of results of the said special election; providing for recounts; providing for the ascertainment of the results of said election by the boards of canvassers and for the form and disposition of certificates of boards of canvassers with respect to the results of said election; providing for the ascertainment of the results of said election by the governor and for a proclamation of the results of said election by the governor; providing for publication of such proclamation; providing for a special nonpartisan election to be held on the twenty-ninth day of March, one thousand nine hundred sixty-six, to elect the members of the convention; providing for the publication of a notice of the special nonpartisan election to elect members of constitutional convention and prescribing the form of the notice; specifying the number of members of the

convention to be elected and providing for the conduct of the special nonpartisan election for election of the members of the constitutional convention; specifying those persons entitled to membership in the convention; providing for certificates of announcement of candidacy for membership in the convention and for their disposition; providing for filing fees and their disposition; providing for the certification and posting of candidates; providing for the publication and printing of sample ballots; providing for the printing of official ballots; making provision for candidates not certified; specifying the form and contents of the ballot for the election of members of the convention; providing for the arrangement of the candidates' names on the ballots and ballot labels; providing for certificates of results by election commissioners and poll~~l~~ clerks and their disposition; providing for certificates of results by boards of canvassers and their disposition; providing for ascertainment of results of the special nonpartisan election by the governor and for a proclamation of such results by the governor and the publication thereof; providing tie vote procedures; providing for publication of the

names of the members of the convention; providing procedures for contests of the special nonpartisan election; making provision for the convening of the constitutional convention and its meeting place; providing for the term and oath of office of members of the convention; providing for expenses and mileage of the members of the convention; providing for the filling of vacancies among the membership of the convention; providing for the organization and expenses of the convention; providing for the framing of proposals of the convention; providing for the filing of such proposals; providing for the submission of the proposals to the people; and providing for a special election for the ratification or rejection of the proposals of the convention.

Be it enacted by the Legislature of West Virginia:

Article 1. Calling a Constitutional Convention.

Section 1. Calling a Constitutional Convention; Con-
2 vention Not to Be Held Unless Majority of Votes Cast at
3 State-wide Polls Are in Favor.—A convention having the
4 authority to alter the constitution of the state is hereby

5 called to convene in the House of Delegates' chamber in
6 the state capitol, Charleston, West Virginia, at one o'clock
7 p.m., eastern standard time, on the twentieth day of July,
8 one thousand nine hundred sixty-six: *Provided*, That
9 such convention shall not be held unless a majority of the
10 votes cast at the polls provided for in article two of this
11 act are in favor of calling the same.

**Article 2. Election on Question of Calling a Constitutional
Convention.**

Section 1. Requiring Polls to Be Open.—The polls
2 shall be opened throughout the state on the ninth day of
3 November, one thousand nine hundred sixty-five, for the
4 purpose of taking the sense of the voters on the question
5 of calling a convention having the authority to alter the
6 constitution of the state, such convention being some-
7 times hereinafter referred to as the constitutional con-
8 vention or the convention.

Sec. 2. Publication of Notice of Election.—The gover-
2 nor shall cause a notice of said election to be published
3 one time at least three months before such election in

4 some newspaper of general circulation published in each
5 county of the state, but if no such newspaper is published
6 in the county such notice shall be published in some news-
7 paper of general circulation in the county. The price for
8 publishing such notice shall be agreed upon in advance,
9 in writing, and shall be paid out of the governor's con-
10 tingent fund.

11 The said notice shall be in the following form, or to the
12 following effect:

13 "NOTICE OF SPECIAL ELECTION ON QUESTION
14 OF CALLING A CONSTITUTIONAL CONVENTION

15 The polls shall be opened throughout the state on
16 the ninth day of November, one thousand nine hun-
17 dred sixty-five, for the purpose of taking the sense of
18 the voters on the question of calling a convention
19 having the authority to alter the constitution of the
20 state.

21 The acts and ordinances of any such convention
22 shall have no validity until they are ratified by the
23 voters of the state.

24 Given under my hand this _____ day of _____

25 -----, one thousand nine hundred sixty-----.

26 -----

27 Governor of the State of

28 West Virginia.”

Sec. 3. **Conduct of Election.**—Except to the extent
2 otherwise provided by this article, the special election on
3 the question of calling a constitutional convention shall
4 be controlled and governed in all respects by the provi-
5 sions of chapter three of the code of West Virginia, one
6 thousand nine hundred thirty-one, as amended, applicable
7 to a special election in which voters pass upon a public
8 question submitted to them. (Said code, as amended,
9 will be hereinafter referred to as the code.)

10 In all other particulars, when no specific provision is
11 made in this article for the control, conduct and govern-
12 ment of any phase of said special election, resort shall be
13 had to other provisions of chapter three of the code not
14 specifically applicable to special elections on public ques-
15 tions but which may furnish guidance and be made con-
16 trolling thereof.

Sec. 4. **Form of Ballot.**—For the purpose of enabling
2 the voters of the state to vote on the question of calling
3 a constitutional convention, at the special election to be
4 held on the date specified in preceding section one of this
5 article, the board of ballot commissioners of each county
6 shall provide printed ballots, and cause to be printed
7 thereon, the following:

8 “Ballot on Calling a Constitutional Convention.

9 ☐ For Constitutional Convention

10 ☐ Against Constitutional Convention.”

11 At least thirty days before the date of such special elec-
12 tion, the board of ballot commissioners, in those counties
13 not using voting machines, shall cause to be printed offi-
14 cial ballots in a quantity of not more than one and one-
15 fifth times the number of registered voters in the county.
16 The printing of the ballots shall be contracted for with
17 the lowest responsible bidder. Ballots other than those
18 caused to be printed by the respective boards of ballot
19 commissioners shall not be cast, received, or counted in
20 said special election.

21 The ballots so printed shall be wrapped and tied in

22 packages, one for each precinct in the county, containing
23 ballots in a quantity of one and one-twentieth times the
24 number of registered voters in such precinct. Each pack-
25 age of ballots shall be sealed with wax, and plainly
26 marked with the number of ballots therein, the name of
27 the magisterial district, and the number of the voting
28 precinct therein, to which the package is to be sent. The
29 names of the ballot commissioners shall also be endorsed
30 thereon.

31 The preparation, printing and use of ballot labels for
32 voting machines shall be governed by the provisions of
33 article four, chapter three of the code.

Sec. 5. Certificates of Election Commissioners and

2 **Poll Clerks; Procedures.**—As soon as the results of such
3 special election are ascertained, the commissioners of elec-
4 tion and poll clerks at each place of voting shall make out
5 and sign four certificates thereof, in the following form,
6 or to the following effect:

7 “We, the undersigned, who acted as commission-
8 ers and poll clerks of the special election held at pre-
9 cinct No. _____ in the district of _____,

10 and county of _____, on the _____ day
11 of _____, one thousand nine hundred sixty-
12 _____, upon the question of calling a constitutional
13 convention, do certify that, having been first duly
14 sworn, we have fairly and impartially held the said
15 election according to law, and the result thereof is as
16 follows:

17 For Constitutional Convention _____ votes.

18 Against Constitutional Convention _____ votes.

19 Given under our hands this _____ day of _____
20 _____, one thousand nine hundred sixty-_____.

21

22

23 (Signature lines)"

24 The said four certificates shall correspond with each
25 other in all respects, shall contain complete returns of the
26 polls taken at such place of voting, and shall be disposed
27 of by the precinct commissioners as follows: One certi-
28 ficate shall be returned, under seal, to the clerk of the
29 county court; one shall be delivered, under seal, to the
30 clerk of the circuit court of the county; one shall be sent,

31 under seal, by registered mail to the secretary of state;
32 and one shall be posted on the outside of the front door
33 of the polling place in each precinct.

34 When the certificates are signed, the ballots shall be
35 enclosed by the commissioners in an envelope which they
36 shall seal up, and write their names in ink across the place
37 or places where the envelope is sealed, and endorse in ink
38 on the outside of the envelope as follows: "Ballots of the
39 special election held at Precinct No. _____, in the district
40 of _____, and county of _____,
41 the _____ day of _____, one thousand nine
42 hundred sixty-_____."

43 One of the commissioners of the election shall, within
44 twelve hours after the completion of the count, tabulation
45 and declaration of the result, deliver the ballots so sealed
46 up, one set of the poll books and tally sheets, one of such
47 certificates, under seal, the registration book and the bal-
48 lot box or boxes, to the clerk of the county court, and one
49 certificate, under seal, and set of poll books and tally
50 sheets, to the clerk of the circuit court, all of which shall

51 be preserved in the respective offices of said clerks as pro-
52 vided for in chapter three of the code.

53 In counties using voting machines, the form of the re-
54 turn sheets, and the duties of the election officials with
55 respect to the closing of the polls, the counting and re-
56 porting of the returns, and the duties of and the proce-
57 dures to be followed by the election officials shall be gov-
58 erned by the provisions of article four, chapter three of
59 the code, as augmented by other provisions of chapter
60 three of the code applying to general, primary, and spe-
61 cial elections.

Sec. 6. Recounts.—After canvassing the returns of the
2 special election, the board of ballot commissioners shall,
3 upon the demand of any person who voted in such elec-
4 tion in the county, open and examine any one or more of
5 the sealed packages of ballots, and recount the same. Ev-
6 ery such person who demands such recount shall be re-
7 quired to furnish bond in a reasonable amount with good
8 sufficient surety to guarantee payment of the costs and ex-
9 penses of such recount in the event the result of the spe-
10 cial election be not changed by such recount; but the

11 amount of such bond shall in no case exceed three hund-
12 red dollars. If the result of the special election in such
13 county be not changed by such recount, the costs and ex-
14 penses of such recount shall be paid by the person or per-
15 sons at whose instance the same was made.

Sec. 7. Certificates of Boards of Canvassers; Pro-

2 **cedures.**—The board of canvassers of each county, or a
3 majority of them, under the regulations prescribed by
4 section nine, article six, chapter three of the code, shall
5 carefully and impartially ascertain the result of the spe-
6 cial election in their county and in each district thereof,
7 and shall record the same, in duplicate, in the following
8 form, or to the following effect:

9 “The board of canvassers of the county of _____
10 _____, having carefully and impartially ex-
11 amined the returns of the special election held in
12 said county, in each district thereof, on the _____
13 day of _____, one thousand nine hundred
14 sixty-_____, do hereby certify that the result of the
15 special election in said county, on the question of call-
16 ing a constitutional convention, is as follows:

17 For Constitutional Convention votes.

18 Against Constitutional Convention votes.

19 Given under our hands this day of.....

20, one thousand nine hundred sixty-.....

21

22

23 (Signature lines)"

24 One of said certificates shall be filed in the office of the
25 clerk of the county court, and the other shall be trans-
26 mitted, not later than twenty-five days following the spe-
27 cial election, to the secretary of state, who shall file and
28 preserve the same until the day on which the result of
29 said election in the state is to be ascertained, as herein-
30 after stated.

31 In counties using voting machines, the canvass of the
32 returns by the board of canvassers and recounts shall
33 be governed by the provisions of article four, chapter
34 three of the code, as augmented by the provisions of chap-
35 ter three of the code applying to general, primary, and
36 special elections: *Provided*, That (1) a recount may be
37 demanded by any person who voted in such special elec-

tion in the county under the relevant conditions set forth in section six of this article, in section twenty-six, article four, chapter three of the code, and in section nine, article six, chapter three of the code; and (2) the board of canvassers shall prepare and transmit to the clerk of the county court and to the secretary of state the certificate of election results provided for in this section and within the time limits herein set forth.

Sec. 8. Proclamation of Result of Special Election by Governor; Publication of Proclamation in the Event Majority of Votes Cast Oppose Convention; Nullification of Succeeding Articles of Act in Such Event.—On the thirtieth day after the special election of the ninth day of November, one thousand nine hundred sixty-five, is held, or as soon thereafter as practicable, but in no event later than forty days after said election, the certificates of the board of canvassers of each county transmitted to the secretary of state shall be laid before the governor, whose duty it shall be to immediately ascertain therefrom the result of said election in the state, and to immediately declare the same by proclamation. In no event shall the

14 governor's proclamation of the result of said election be
15 issued later than the thirty-first day of December, one
16 thousand nine hundred sixty-five.

17 If a majority of the votes cast at said special election
18 are opposed to the calling of a constitutional convention,
19 the governor shall cause the proclamation declaring the
20 result of such election to be published one time in one or
21 more newspapers printed in the seat of government. The
22 price for publishing such notice shall be agreed upon in
23 advance, in writing, and shall be paid out of the gover-
24 nor's contingent fund.

25 If a majority of the votes cast at said special election
26 are opposed to the calling of a constitutional convention,
27 a constitutional convention shall not be held and the suc-
28 ceeding articles and sections of this act shall thereupon be
29 null and void.

**Article 3. Election of the Members of the Constitutional Con-
vention.**

**Section 1. Publication of Proclamation of Results of Spe-
cial Election in Event Majority of Votes Cast Favor Con-
vention; Publication of Notice of Election to Elect Mem-**

4 **bers.**—If a majority of the votes cast at the special elec-
5 tion provided for in the immediately preceding article of
6 this act are in favor of the calling of a constitutional
7 convention, the governor shall cause his proclamation
8 declaring the result of such election, together with the
9 notice outlined in section four of this article, to be pub-
10 lished one time, within thirty days of the issuance of
11 such proclamation, in some newspaper published and of
12 general circulation in each county of the state, but if no
13 such newspaper is published in the county, such procla-
14 mation and notice shall be published in some newspaper
15 of general circulation in the county. The price of such
16 publication shall be agreed upon in advance, in writing,
17 and shall be paid out of the governor's contingent fund.

Sec. 2. Time and Places of Holding Special Election

2 for Election of Members of Constitutional Convention.—

3 If a majority of the votes cast at the special election pro-
4 vided for in the immediately preceding article of this act
5 are in favor of the calling of a constitutional convention,
6 a special nonpartisan election shall be held at the voting
7 place in each of the voting precincts in the state on the

8 twenty-ninth day of March, one thousand nine hundred
9 sixty-six, for the purpose of electing members of the
10 constitutional convention to be convened in the House of
11 Delegates' chamber in the state capitol, Charleston, West
12 Virginia, at one o'clock, p.m., eastern standard time, on
13 the twentieth day of July, one thousand nine hundred
14 sixty-six.

Sec. 3. Number of Members to be Elected; Apportion-

2 **ment.**—The constitutional convention shall consist of one
3 hundred and six members, who shall be apportioned
4 among the several counties as follows:

5 The counties of Barbour, Berkeley, Braxton, Calhoun,
6 Clay, Doddridge, Gilmer, Grant, Greenbrier, Hampshire,
7 Hardy, Jackson, Jefferson, Lewis, Lincoln, Mason, Min-
8 eral, Monroe, Morgan, Nicholas, Pendleton, Pleasants,
9 Pocahontas, Preston, Putnam, Randolph, Ritchie, Roane,
10 Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wet-
11 zel and Wirt shall elect one member each.

12 The counties of Boone, Brooke, Hancock, Marshall,
13 Mingo, Wayne and Wyoming shall elect two members
14 each;

15 The counties of Fayette, Logan, Marion and Monon-
16 galia shall elect three members each;

17 The counties of Harrison, McDowell, Mercer, Ohio, Ra-
18 leigh and Wood shall elect four members each;

19 The county of Cabell shall elect six members; and

20 The county of Kanawha shall elect fourteen members.

Sec. 4. Notice of Special Nonpartisan Election to Elect

2 **Members of Constitutional Convention.**—The governor
3 shall cause a notice of the special nonpartisan election to
4 be held on the date specified in preceding section two of
5 this article to be published in accordance with the pro-
6 visions of preceding section one of this article.

7 The said notice shall be in the following form, or to
8 the following effect:

9 “NOTICE OF SPECIAL NONPARTISAN ELECTION
10 TO ELECT MEMBERS OF THE CONSTITUTIONAL
11 CONVENTION

12 A special nonpartisan election shall be held at the
13 voting place in each of the voting precincts in the
14 state on the twenty-ninth day of March, one thou-
15 sand nine hundred sixty-six, for the purpose of

16 electing members of the constitutional convention
17 to be convened in the House of Delegates' chamber in
18 the state capitol, Charleston, West Virginia, at one
19 o'clock, p.m., eastern standard time, on the twentieth
20 day of July, one thousand nine hundred sixty-six.

21 The constitutional convention shall consist of one
22 hundred and six members, who are to be apportioned
23 among the several counties.

24 (Here state the county in which the notice is to
25 be published and the number of members in the con-
26 stitutional convention to which the county is entitled.)

27 Given under my hand this _____ day of _____,
28 one thousand nine hundred sixty-.....

29

30 Governor of the State of West Virginia"

31 A copy of the above notice shall be mailed by the
32 governor, within thirty days after he has issued his
33 proclamation declaring the results of the special elec-
34 tion on the question of whether there will be a con-
35 stitutional convention, to the clerk of the circuit court
36 of each county.

**Sec. 5. Conduct of Special Election for Election of
2 Members of the Constitutional Convention.**—Except to
3 the extent otherwise provided by this article, the special
4 election to elect the members of the constitutional con-
5 vention shall be governed and controlled in all respects
6 by the provisions of chapter three of the code applicable
7 to a special election.

8 In all other particulars, when no specific provision is
9 made in this article for the control, conduct and govern-
10 ment of any phase of said special election, resort shall be
11 had to other provisions of chapter three of the code not
12 specifically applicable to such special election but which
13 may furnish guidance and be made controlling thereof.

Sec. 6. Persons Entitled to Membership in Convention.
2 —Only persons who are entitled to vote in the special
3 election of the twenty-ninth day of March, one thousand
4 nine hundred sixty-six, in the county from which elected
5 shall be eligible for membership in the constitutional con-
6 vention.

**Sec. 7. Candidates for Membership from a County in
2 the Constitutional Convention.**—Any person who is eli-

3 gible to hold membership in the constitutional convention
4 as a representative of a county may file with the clerk of
5 the circuit court of the county a certificate declaring him-
6 self a candidate for election as a member of the consti-
7 tutional convention; which certificate shall be in form or
8 effect as follows:

9 "I, _____, hereby certify that I am
10 a candidate for nonpartisan election to membership
11 in the constitutional convention to be convened on
12 July 20, 1966, from _____ county,
13 and desire my name printed on the official ballot to
14 be voted in said county at the special nonpartisan
15 election to be held on the 29th day of March, 1966;
16 that I am a legally qualified voter of the county of
17 _____, State of West Virginia;
18 that the address of my residence in _____
19 county is _____;
20 that I am eligible for such membership; and that I am
21 a candidate therefor in good faith.

22

23

Candidate

24 Signed and acknowledged before me this _____
25 day of _____, 19____.

26 _____

27 Signature and official title
28 of certifying officer”

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.

32 Such certificate shall be filed with the clerk of the cir-
33 cuit court not earlier than the third day of January, one
34 thousand nine hundred sixty-six, and not later than the
35 seventeenth day of January, one thousand nine hundred
36 sixty-six, and must be received by the clerk before mid-
37 night, eastern standard time, of the latter date, or, if
38 mailed, shall be postmarked before that hour.

Sec. 8. Filing Fees and Their Disposition.—Every
2 person who becomes a candidate for membership in the
3 constitutional convention shall, at the time of filing the
4 certificate of announcement, as required in the preceding
5 section of this article, pay a filing fee of twenty-five

6 dollars to the clerk of the circuit court. No certificate of
7 announcement shall be received until the filing fee is paid.

8 All filing fees received by ~~by~~ such clerk from candidates
9 for membership in the constitutional convention shall be
10 credited to the general county fund.

Sec. 9. Publication and Printing of Sample Official

2 **Ballots.**—Between the eighteenth day of January, one
3 thousand nine hundred sixty-six, and the fifth day of
4 February, one thousand nine hundred sixty-six, the
5 ballot commissioners of each county shall prepare from
6 the certificates of announcements, as provided in this
7 article, a sample official ballot for the special election to
8 be held on the twenty-ninth day of March, one thousand
9 nine hundred sixty-six, placing thereon the names of all
10 the candidates for membership in the constitutional con-
11 vention as a representative of such county to be voted
12 for at such special election.

13 Between the seventh day of February, one thousand
14 nine hundred sixty-six, and the twenty-sixth day of
15 February, one thousand nine hundred sixty-six, the bal-
16 lot commissioners of each county shall publish such sam-

17 ple official election ballot in two successive issues of two
18 newspapers of opposite politics published and of general
19 circulation in such county if there be two such news-
20 papers, and if there be only one such newspaper so pub-
21 lished and circulated, then they shall publish such ballot
22 in two successive issues of such newspaper published and
23 of general circulation in such county. If there be no
24 newspaper published and of general circulation in such
25 county, the ballot commissioners shall publish such sam-
26 ple official special election ballot in two issues of a news-
27 paper of general circulation in such county.

28 The sample official ballots shall be printed on colored
29 paper and there shall be printed across the face of such
30 sample ballot the words "sample ballot," and no sample
31 ballot shall be voted or counted in the special election.

Sec. 10. Printing of Official Ballots; Number.—At least
2 thirty days before the date of such special election, the
3 board of ballot commissioners, in those counties not using
4 voting machines, shall cause to be printed official ballots
5 in a quantity of not more than one and one-fifth times the
6 number of registered voters in the county. The printing

7 of the ballots shall be contracted for with the lowest re-
8 sponsible bidder. Ballots other than those caused to be
9 printed by the respective boards of ballot commissioners
10 shall not be cast, received, or counted in said special elec-
11 tion.

12 The ballots so printed shall be wrapped and tied in
13 packages, one for each precinct in the county, containing
14 ballots in a quantity of one and one-twentieth times the
15 number of registered voters in such precinct. Each pack-
16 age of ballots shall be sealed with wax, and plainly
17 marked with the number of ballots therein, the name of
18 the magisterial district, and the number of the voting pre-
19 cinct therein, to which the package is to be sent. The
20 names of the ballot commissioners shall also be endorsed
21 thereon.

22 The preparation, printing and use of ballot labels for
23 voting machines shall be governed by the provisions of
24 article four, chapter three of the code.

Sec. 11. Candidates Not Certified.—If, by satisfactory
2 evidence, it shall appear to the ballot commissioners of
3 any county that announcements have been made in con-

4 formity with the provisions of this article and no certifi-
5 cate thereof has been received by them, they shall include
6 such persons among the names of candidates to be printed
7 upon the ballots, as in this article provided.

Sec. 12. Form and Contents of Ballot.—All ballots for
2 the special nonpartisan election to be held on the twenty-
3 ninth day of March, one thousand nine hundred sixty-six,
4 shall be printed in black ink on number two white
5 book paper sufficiently thick so that the printing cannot
6 be distinguished from the back, and shall contain the
7 names of every candidate for membership in the consti-
8 tutional convention whose name has been certified and
9 filed according to law, and no others.

10 The ballots, except the heading, which shall be in dis-
11 play type, shall be printed in eight-point type; and the
12 residence of the candidate in lower case letters; and the
13 name of the candidate shall be printed in capital letters.

14 The name and the residence of the candidate may be
15 printed in the same line. The name of each candidate
16 shall be printed in a space defined by ruled lines, and with
17 a black square on its left enclosed by heavy dark lines.

18 The arrangement of the front of the ballot shall con-
 19 form as nearly as practicable to the plan here given:

20 Nonpartisan Ballot for Election *of*

21 Members of the Constitutional Convention

22 to be Convened on the 20th day of July, 1966.

23 For Member(s) of the Constitutional

24 Convention from _____ County

25 (Vote for _____)

Name	Name	Name
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

26 On the back of the ballot shall be printed or stamped
 27 in black ink the words "Official Ballot for use in the spe-
 28 cial nonpartisan election to be held on the _____ day of
 29 _____, 19____," and underneath shall be two blank
 30 lines followed by the words "Poll Clerks."

31 The clerk of the circuit court shall arrange the names
 32 of the candidates to be printed on the ballot in alpha-
 33 betical order, according to the surname.

34 In printing each set of ballots, the positions of ^{the} names
35 of the candidates shall be changed as many times as there
36 are candidates. As nearly as possible, an equal number
37 of ballots shall be printed after each change. In making
38 the change of position, the printer shall take the line of
39 type containing the first name and place it at the bottom
40 of the list of names and move up the column so that the
41 name that before was second shall be first after the
42 change. After the ballots are printed, they shall be kept
43 in separate piles, one pile for each change in position,
44 and shall then be gathered by taking one from each pile.
45 Sample ballots shall be in the same form as the official
46 ballot, but the order of the names thereon need not be
47 alternated.

48 The ballot shall be so printed so as to give each voter
49 a clear opportunity to designate by crossmark, in a blank,
50 enclosed space on the left, and before the name of each
51 candidate, his choice of particular candidates.

52 In those counties using voting machines, the clerk of
53 the county court shall place the ballot labels which have
54 been printed and delivered to him in the ballot frames of

*OK
Chairman's Amendment?*

55 the voting machines in such manner as will most nearly
56 conform to the arrangement prescribed for paper ballots.

57 In those counties using voting machines, the clerk of
58 the circuit court shall appoint a time, not later than the
59 first day of February, one thousand nine hundred sixty-
60 six, at which time all candidates for membership in the
61 constitutional convention are to appear in his office for
62 the purpose of drawing by lot to determine where their
63 names will appear on the voting machine. The clerk shall
64 give due notice of such time to each such candidate by
65 registered or certified mail, return receipt requested. At
66 the time appointed, all such candidates shall assemble
67 in the office of such clerk and such candidates shall then
68 proceed to draw by lot to determine where their names
69 shall appear on the voting machines. The number so
70 drawn by each such candidate shall determine where his
71 or her name shall appear on the voting machines. In the
72 event any candidate or candidates fail to appear at the time
73 appointed, the clerk shall draw for such absent candidate
74 or candidates in the presence of those candidates assem-
75 bled, if any, and the number so drawn by the clerk shall

76 determine where the name of any absent candidate or
77 candidates shall appear on the voting machines.

Sec. 13. Certificates of Election Commissioners and Poll

2 **Clerks; Procedures.**—As soon as the results of such non-
3 partisan special election are ascertained, the commission-
4 ers of election and poll clerks at each place of voting shall
5 make out and sign four certificates thereof, in the follow-
6 ing form, or to the following effect:

7 “We, the undersigned who acted as commissioners
8 and poll clerks of the special nonpartisan election
9 held at precinct No. _____ in the district of
10 _____, and county of _____, on the
11 _____ day of _____, one
12 thousand nine hundred sixty-_____, do certify that,
13 having been first duly sworn, we have fairly and
14 impartially held the said special election according
15 to law, and the result thereof is as follows:

16 “For member(s) of the constitutional convention
17 from _____ county,
18 A.B. received _____ votes,
19 C.D. received _____ votes,

20 E.F. received votes,

21 (and so on throughout stating, according to the truth,

22 the full name of every person voted for, and in words

23 at length, and also in figures, the number of votes re-

24 ceived.)

25 "Given under our hands this day of,

26 one thousand nine hundred sixty-.....

27

28

29

30 (Signature lines)"

31 Each such certificate shall be signed by each commis-

32 sioner and poll clerk of the precinct.

33 The said four certificates shall correspond with each

34 other in all respects, shall contain complete returns of

35 the polls taken at such place of voting, and shall be dis-

36 posed of by the precinct commissioners as follows: One

37 certificate shall be returned, under seal, to the clerk of

38 the county court; one shall be delivered, under seal, to

39 the clerk of the circuit court of the county; one shall be

40 sent, under seal, by registered mail, to the secretary of

41 state; and one shall be posted on the outside front door
42 of the polling place in each precinct.

43 When the certificates are signed, the ballots shall be
44 enclosed by the commissioners in an envelope which
45 they shall seal up, and write their names in ink across
46 the place or places where it is sealed, and endorse in ink
47 on the outside of the envelope as follows: "Ballots of the
48 special election held at Precinct No. _____, in the dis-
49 trict of _____, and county of _____, the
50 _____ day of _____, one thousand nine hundred
51 sixty-_____."

52 One of the commissioners of the election shall, within
53 twelve hours after the completion of the count, tabula-
54 tion and declaration of the results, deliver the ballots so
55 sealed up, one set of the poll books and tally sheets, one
56 of such certificates, under seal, the registration book, and
57 the ballot box or boxes, to the clerk of the county court,
58 and one certificate, under seal, and set of poll books and
59 tally sheets, to the clerk of the circuit court, all of which
60 shall be preserved in the respective offices of said clerks
61 as provided for in chapter three of the code.

62 In counties using voting machines, the form of the
63 return sheets, and the duties of the election officials with
64 respect to the closing of the polls, the counting and re-
65 porting of the returns, and the duties of and the proce-
66 dures to be followed by the election officials shall be
67 governed by the provisions of article four, chapter three
68 of the code, as augmented by other provisions of chapter
69 three of the code applying to general, primary, and spe-
70 cial elections.

Sec. 14. Certificates of Boards of Canvassers; Proce-
2 **dures.**—The board of canvassers of each county, or a
3 majority of them, under the regulations prescribed by
4 section nine, article six, chapter three of the code, shall
5 carefully and impartially ascertain the result of the spe-
6 cial nonpartisan election in their county and in each dis-
7 trict thereof, and shall record the same in duplicate, in
8 the following form, or to the following effect:

9 “The board of canvassers of the county of _____
10 _____, having carefully and impartially ex-
11 amined the returns of the special nonpartisan elec-
12 tion held in said county, in each district thereof, on

13 the _____ day of _____,
14 one thousand nine hundred sixty-_____, do hereby
15 certify that the result of the special election in said
16 county is as follows:

17 "For member(s) of the constitutional convention
18 from _____ county,

19 A.B. received _____ votes,

20 C.D. received _____ votes,

21 E.F. received _____ votes,

22 (and so on throughout stating, according to the truth,
23 the full name of every person voted for, and in words
24 at length, and also in figures, the number of votes re-
25 ceived.)

26 "Given under our hands this _____ day of
27 _____, one thousand nine hundred sixty-_____.

28 _____

29 _____

30 _____

31 (Signature lines)"

32 One of said certificates shall be filed in the office of the
33 clerk of the county court, and the other shall be trans-

34 mitted, not later than twenty-five days following the spe-
35 cial nonpartisan election to the secretary of state, who
36 shall file and preserve the same until the day on which
37 the result of said election in each county is to be ascer-
38 tained, as herinafter stated.

39 In counties using voting machines, the canvass of the
40 returns by the board of canvassers and recounts shall
41 be governed by the provisions of article four, chapter
42 three of the code, as augmented by the provisions of
43 chapter three of the code applying to general, primary
44 and special elections: *Provided*, That (1) a recount may
45 be demanded by any candidate voted for at such special
46 election under the relevant conditions set forth in sec-
47 tion twenty-six, article four, chapter three of the code,
48 and in section nine, article six, chapter three of the code;
49 and (2) the board of canvassers shall prepare and trans-
50 mit to the clerk of the county court and to the secretary
51 of state the certificate of election results provided for in
52 this section and within the time limits herein set forth.

Sec. 15. Proclamation of Result of Special Nonpartisan

2 **Election by Governor.**—On the thirtieth day after the

3 special nonpartisan election of the twenty-ninth day of
4 March, one thousand nine hundred sixty-six, is held, or
5 as soon thereafter as is practicable, but in no event later
6 than forty days after said election, the certificates of the
7 board of canvassers of each county transmitted to the
8 secretary of state shall be laid before the governor, whose
9 duty it shall be to immediately ascertain therefrom the
10 result of said election in each county, and to immedi-
11 ately declare the same by proclamation.

12 The person or persons having the highest number of
13 votes in the county in which he or they are candidates
14 for membership in the constitutional convention shall
15 be declared by the governor duly elected as members of
16 the convention.

Sec. 16. Tie Vote Procedures.—Whenever it appears
2 to the governor that two or more of the persons voted
3 for for membership in the state constitutional convention
4 as a representative of a county have received the highest
5 and equal number of votes for membership in the con-
6 vention as such representative, so that the election to
7 membership is not decided by the returns, he, being re-

8 quired to declare the result of the election, shall decide
9 the tie by the selection of one of such persons, and de-
10 clare such person duly elected as a member of the con-
11 vention.

Sec. 17. Publication of Proclamation of Results of

2 **Special Nonpartisan Election.**—The governor shall cause
3 his proclamation declaring the results of such special
4 nonpartisan election in each county to be published one
5 time, within thirty days of the issuance of such procla-
6 mation, in one or more newspapers printed in the seat of
7 government. The price of such publication shall be
8 agreed upon in advance, in writing, and shall be paid
9 out of the governor's contingent fund.

10 The proclamation shall be read by the governor, or by
11 some person designated by him, to the members of the
12 constitutional convention, immediately following the con-
13 vening of such convention on the twentieth day of July,
14 one thousand nine hundred sixty-six.

Sec. 18. Publication of Results of Special Nonpartisan

2 **Election.**—The governor shall cause to be published in

3 each county of the state the names of those persons de-
4 clared by him to have been elected in the special non-
5 partisan election in which each county participated.

6 The said notice shall be in the following form, or to
7 to the following effect:

8 "MEMBERS OF CONSTITUTIONAL CONVENTION

9 The members of the constitutional convention from
10 ----- county are:

11 (State names and residences)

12 Given under my hand the ----- day of -----,
13 one thousand nine hundred sixty-----.

14 -----

15 Governor of the State
16 of West Virginia."

17 Said notice shall be published one time, within thirty
18 days of the issuance of the governor's proclamation de-
19 claring the results of said special nonpartisan election,
20 in some newspaper published and of general circulation
21 in each county of the state, but if no such newspaper is
22 published in the county, such proclamation and notice
23 shall be published in some newspaper of general circula-

24 tion in the county. The price of such publication shall
25 be agreed upon in advance, in writing, and shall be paid
26 out of the governor's contingent fund.

Sec. 19. Contest of Elections; Notices and Procedure.—

2 Any person intending to contest the election of another
3 as a member of the constitutional convention as a rep-
4 resentative of a county, shall, within twenty-one days
5 after the election, give him notice thereof in writing,
6 and a list of the votes he will dispute, with the objections
7 to each, and of the votes rejected for which he will con-
8 tend. If the contestant objects to the legality of the
9 election, or the qualification of the person returned, the
10 notice shall set forth the facts on which such objection
11 is founded. The person whose election as a member of
12 the convention is contested, shall, within fourteen days
13 after receiving such notice, deliver to the contestant a
14 like list of the votes he will dispute and of the objection
15 to each, and of the rejected votes he will claim; and, if
16 he has any objection to the qualification of the contestant,
17 shall specify in such notice the facts on which the objec-
18 tion is founded. Each party shall append to the notice

19 an affidavit that the matters therein set forth, so far as
20 they are stated of his knowledge, are true, and that, so
21 far as they are stated on the information of others, he
22 believes them to be true. If new facts are discovered by
23 either party after he has given notice as aforesaid, he
24 may give an additional notice or notices to his adversary,
25 with specifications and affidavits as above prescribed.

26 The notice of contest shall be presented to the consti-
27 tutional convention within ten days after its convening.

Sec. 20. Depositions; Subpoenas; Time; Tie Vote De-
2 **cision.**—Either party may begin to take the depositions
3 in such contests for members in the constitutional con-
4 vention at any time after the delivery of the original
5 notice by the contestant. But reasonable notice of every
6 such deposition shall be given, and such notice shall
7 specify the names of the witnesses to be examined. The
8 depositions may be taken before a justice, notary, or any
9 officer authorized to take depositions in civil actions; and
10 the officer before whom they are taken shall certify and
11 seal the same, and endorse his name across the place
12 where they are sealed, and address and transmit the same,

13 by mail or otherwise, to the presiding officer of the con-
14 stitutional convention. When the contest is referred to a
15 committee, the presiding officer shall deliver the deposi-
16 tions to such committee for examination and report. The
17 parties shall finish taking depositions five days at least
18 before the convening of the constitutional convention.
19 Neither party shall have the benefit of any deposition
20 taken otherwise than as aforesaid, unless further time be
21 given by resolution of the constitutional convention.

22 Subpoenas for witnesses shall be issued by the clerk of
23 the circuit court, or by a justice, upon application of either
24 party; and witnesses shall be entitled to the same allow-
25 ances and privileges, and be subject to the same penalties,
26 as if summoned to attend before the circuit court in civil
27 actions.

28 If it be ascertained that an equal number of legal votes
29 was given for the contestant and the person returned, the
30 constitutional convention shall declare which of them
31 is elected.

32 There shall be no judicial review of the decisions of

33 the constitutional convention in election contests in-
34 volving membership in the convention.

Sec. 21. Correction of Returns; Extent.—Though il-
2 legal votes be received, or legal votes be rejected, at any
3 place of voting, the returns of the votes taken at such
4 place shall not be set aside for that cause, but it may be
5 shown, by proper evidence before the constitutional
6 convention, for whom such illegal votes or any of them
7 were cast, or for whom the legal votes which were re-
8 jected would have been given, and the returns shall be
9 corrected only to the extent that it is so shown.

Sec. 22. Costs in Election Contests.—The cost of every
2 contested election for membership in the constitutional
3 convention shall include only the expenses of serving
4 notices, taking depositions and the allowances to wit-
5 nesses; and shall be noted at the foot of every deposition
6 or set of depositions, by the person taking the same. If the
7 contestant fails in setting aside the election, there shall
8 be awarded against him the amount of such costs in-
9 curred or expended by the person who was returned or
10 declared elected. Otherwise, each party shall pay his

11 own costs, unless it appears that the person returned or
12 declared elected was guilty of fraud or malpractice in the
13 election, or in procuring such return or declaration, in
14 which case costs shall be awarded against him in favor
15 of the contestant. Where costs are awarded in favor of
16 either party, the amount thereof shall be ascertained un-
17 der direction of the constitutional convention, and a cer-
18 tificate thereof, authenticated by the signature of the
19 presiding officer, shall be delivered to the party in whose
20 favor they are awarded, which certificate shall have the
21 force of a judgment, and if such costs be not paid within
22 ten days after the date thereof, the clerk of the circuit
23 court of the county in which the party against whom the
24 costs were awarded resides, may issue execution on such
25 certificate, upon its delivery to such clerk, in like manner
26 as upon a judgment of the circuit court. But no person
27 contesting the seat of another in the constitutional con-
28 vention shall be entitled to pay or mileage if the contest
29 fails.

Article 4. The Constitutional Convention.

Section 1. Convening of the Constitutional Conven-

2 **tion; Meeting Place.**—The Constitutional convention, to

3 which the members were elected in the special non-
4 partisan election held on the twenty-ninth day of March,
5 one thousand nine hundred sixty-six, shall convene in
6 the House of Delegates' chamber in the state capitol,
7 Charleston, West Virginia, at one o'clock, p.m., eastern
8 standard time, on the twentieth day of July, one thou-
9 sand nine hundred sixty-six. The convention, by a vote
10 of the majority of the members elected thereto, may,
11 after convening, move the site of the convention to any
12 other location in the state.

Sec. 2. Term of Office.—The term of office of members
2 of the constitutional convention shall commence on the
3 day of the convening of the convention and shall continue
4 until the final adjournment of the convention to which
5 they are elected.

Sec. 3. Oath of Office.—Every person elected to mem-
2 bership in the constitutional convention, before entering
3 upon the duties of his office, shall take the oath or affir-
4 mation prescribed by section five, article four of the state
5 constitution.

Sec. 4. Members of Convention Not to Be Compensated;

2 **Expenses; Mileage.**—The members of the constitutional
3 convention shall not be compensated for their services as
4 members of the convention. Each seated member of the
5 convention shall be reimbursed for actual and necessary
6 expenses, not exceeding twenty-five dollars per day, in-
7 curred in attending meetings of the convention or of a
8 committee thereof, and in engaging in any business of
9 the convention for which the president of the convention
10 has authorized reimbursement for expenses. Each seated
11 member of the convention shall also be entitled to receive
12 ten cents per mile and no more for one round trip each
13 month during which the constitutional convention is in
14 session between his place of residence and the site of
15 the constitutional convention, the mileage to be measured
16 by the most direct route.

17 Reimbursement for expenses and the mileage of the
18 members of the constitutional convention shall be paid
19 monthly out of the appropriations made for the expenses
20 of the convention by the state treasurer upon warrants

21 of the auditor prepared from vouchers submitted by the
22 secretary of the convention.

Sec. 5. Vacancy; Creation; Filling.—An office of mem-

2 ber of the constitutional convention shall become vacant
3 on the happening of any of the following events before
4 the expiration of the term of the office:

5 The death of the member; his resignation; his removal
6 from office; his ceasing to be a resident of the county
7 from which he was elected; the decision of the con-
8 stitutional convention declaring void his election or ap-
9 pointment; his expulsion as a member of the convention;
10 the refusal of the convention to seat him; or his refusal
11 or neglect to take and subscribe to the oath of his office.

12 Any person duly elected to membership in the constitu-
13 tional convention may resign by filing a written notice
14 containing the effective date of the resignation with the
15 president of the convention, who shall forthwith
16 transmit the same to the governor. In case of a vacancy
17 by death, resignation, or otherwise of any member of the
18 convention, such vacancy shall be filled by appointment

19 by the governor of a qualified resident of the same county.

Sec. 6. Organization of the Convention.—The governor
2 shall open the convention and preside at its first session
3 and until permanent officers are selected. So long as he
4 presides, he may cast the deciding vote in the event of a
5 tie. The convention shall be the judge of the qualification
6 of its members, their election or appointment. It shall
7 have the power by a majority of votes of the members
8 elected to the convention to choose a president and secre-
9 tary and all other appropriate officers, to prescribe their
10 functions, powers, and duties, to employ a staff of assist-
11 ants, and to make rules and regulations for the conduct
12 of its business.

Sec. 7. Expenses of the Convention.—The convention
2 shall have the power, within the limits of appropriations,
3 to incur such expenses as may be necessary in order
4 to exercise the powers conferred and to perform the
5 duties imposed by this act.

Article 5. Proposals of the Convention.

Section 1. Framing and Submission of Proposals to the
2 **People.**—The constitutional convention may submit to the

3 people (1) a new constitution for ratification or rejection;
4 or (2) a new constitution, together with an alternative
5 part or parts thereof, so that the people may ratify or
6 reject the new constitution in its entirety or may ratify
7 or reject a new constitution and ratify as a substitute for
8 a part or parts thereof an alternative part or parts; or
9 (3) one or more amendments or partial revisions of the
10 existing constitution so that the people may ratify
11 or reject all such amendments or partial revisions or
12 ratify or reject any one or more such amendments or
13 partial revisions; or (4) one or more amendments or par-
14 tial revisions of the existing constitution, together with
15 one or more alternative amendments or partial revisions
16 thereof, so that the people may ratify or reject one, part,
17 or all of such amendments or partial revisions and ratify
18 as a substitute for any one or more of such amendments
19 or partial revisions thereof an alternative amendment,
20 amendments, partial revision or revisions.

21 It is not the intention of the Legislature in this section
22 to limit the convention in the manner in which it may
23 frame its proposals for submission to the people. The

24 convention is to have plenary power in this regard, and
25 the foregoing alternatives are to be construed as sugges-
26 tions and not as prohibiting other alternatives or varia-
27 tions in the suggested alternatives.

Sec. 2. Proposals Filed.—When the convention by a
2 majority of the votes of the members elected to the con-
3 vention shall have agreed upon its proposals, and the
4 manner of their submission to the people, as aforesaid,
5 an original and two true copies thereof shall be pre-
6 pared, and signed by the president and secretary of the
7 convention and delivered to the governor who shall cause
8 the original copy to be filed in the office of the secretary
9 of state.

10 Sufficient printed copies of the proposals of the con-
11 vention shall be printed at the expense of the convention
12 for distribution by the governor to persons and organiza-
13 tions requesting the same.

Sec. 3. Election on Proposals.—The proposals of the
2 convention, as framed by the convention, shall be sub-
3 mitted to the people at a special election held on a day
4 separate from the date of any primary or general election,

5 the date of which election shall be designated by the con-
6 vention: *Provided*, That such special election shall be
7 held within eight months of the adjournment of the
8 convention.

9 The special election for the ratification or rejection of
10 the proposals of the convention shall, except to the extent
11 otherwise directed by the convention, be controlled and
12 governed in all respects by the provisions of chapter three
13 of the code applicable to a special election in which voters
14 pass upon a public question submitted to them. In all
15 other particulars, when no specific direction is given by
16 the constitutional convention for the control, conduct and
17 government of any phase of said special election to ratify
18 or reject the proposals of the convention, resort shall be
19 had to other provisions of chapter three of the code not
20 specifically applicable to special elections on public ques-
21 tions but which may furnish guidance and be made con-
22 trolling thereof.

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

O. Ray Parker
Chairman Senate Committee

James W. Loop
Chairman House Committee

Originated in the House.

Takes effect from passage.

J. Howard Meyer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard E. Carson
President of the Senate

H. Robert White
Speaker House of Delegates

The within *approved* this the *19*
day of *March*, 1965.

Wesley C. Smith
Governor



Presented to the Governor's Office

March 19, 1965

4:10 P.M.