WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973

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ENROLLED

HOUSE BILL No. 1337

(By Mr. Cline)

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PASSED April 14, 1973

In Effect

Veto - 1337

FILED IN THE OFFICE
EDGAR F. NEISHELL III
SECRETARY OF STATE
THIS DATE 5/3/73
AN ACT to amend sections nine, ten and twenty-one, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections eight and thirteen, article five of said chapter; to amend and reenact sections two and five, article six of said chapter; and to amend and reenact section five, article ten of said chapter, all relating to elections; compensation and organization of political party committees; deleting election of members from wards from certain cities and to provide in lieu thereof election of members from executive committee districts created by county court for purposes of this section to be compact, contiguous and of equal population; the printing of ballots; number and requirement of ballots; clarification when multiple seats are to be filled for the same office; packaging and sealing of ballots; form and contents of ballots in primary elections; requiring that candidates for House of Delegates shall be in first column; preparation and form of general election ballots; order of offices and candidates to be same as in primary elections; rules and procedures in elections other than primaries; pro-
procedure for voting a straight ticket; voting for candidates of
another party when multiple seats are to be filled for that office;
delegate district executive committees; extending terms of
present members of said committees; and establishing new
delegate district executive committees and procedures to fill
vacancies in office and vacancies in nomination of members of
the House of Delegates.

Be it enacted by the Legislature of West Virginia:

That sections nine, ten and twenty-one, article one, chapter three
of the code of West Virginia, one thousand nine hundred thirty-one,
as amended, be amended and reenacted; that sections eight and
thirteen, article five of said chapter be amended and reenacted; that
sections two and five, article six 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.
§3-1-9. Political party committees; how composed; organization.

1 At the May primary election in the year one thousand nine
hundred seventy-two and at the May primary election in the
year one thousand nine hundred seventy-four and in every
fourth year subsequent to the May primary election held in
the year one thousand nine hundred seventy-four, the voters
of each political party in each senatorial district shall elect
two male and two female members of the state executive
committee of the party. In senatorial districts containing two
or more counties, not more than two such elected committee
members shall be residents of the same county. The com-
mittee, when convened and organized as herein provided,
shall appoint three additional members of the committee
from the state at large.

14 At such primary election, the voters of each political party
in each county shall elect one male and one female member
of the party's executive committee of the congressional district
and of the senatorial district in which such county is situated.

18 At the same time such voters in each magisterial district or exe-
cutive committee district, as the case may be, of the county
shall elect one male and one female member of the party's
county executive committee.
For the purpose of complying with the provisions of this section the county court shall create such executive committee districts as they shall determine, which such districts shall not be fewer than the number of magisterial districts in such counties nor shall they exceed in number the following: Fifty for counties having a population of one hundred thousand persons or more; forty for counties having a population of fifty thousand to one hundred thousand; and ten from counties having a population of fifty thousand or less.

The executive committee districts shall not cross magisterial district lines, shall be as nearly equal in population as practicable, and shall each be composed of compact, contiguous territory. The county courts shall constitute the executive committee districts before January first, one thousand nine hundred seventy-four to be effective for the term of office of executive members elected at the one thousand nine hundred seventy-four primary election and thereafter. The county courts shall not thereafter change the territorial boundaries of such districts, except such change shall be made within two years immediately following a decennial census.

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

The terms of office of all members of executive committees so elected at the May primary election in the year one thousand nine hundred seventy-two shall begin on the first day of June, following said May primary, and shall continue for two years thereafter and until their successors are elected and qualified. The term of office of all members of executive committees elected at the May primary in the year one thousand nine hundred seventy-four, and every four years thereafter, shall begin on the first day of June, following said May primary, and shall continue for four years thereafter and until their successors are elected and qualified. Vacancies in the state executive committee shall be filled by the members of the committee for the unexpired term. Vacancies in the party's executive committee of a congressional district, senatorial district or county shall be filled by the party's executive committee of the county in which such vacancy exists, and shall be for the unexpired term.

As soon as possible after the first day of June, following
the election of the new executive committees, as herein
provided, they shall convene within their respective political
divisions, on the call of the chairman of corresponding out-
going executive committees, or by any member of the new
executive committee in the event there is no corresponding
outgoing executive committee, and proceed to select a chair-
man, a treasurer and a secretary, and such other officers
as they may desire, each of which officers shall for their
respective committees perform the duties that usually apper-
tain to such offices.

§3-1-10. Delegate district executive committees.

(a) On and after the first day of January, one thousand
nine hundred seventy-four, new delegate district executive
committees shall be constituted as follows:

(1) In delegate districts that include only one whole county
or only a portion of one county, the political party executive
committee of that county shall constitute the political party
executive committee of that delegate district;

(2) In delegate districts that include two or more whole
counties, the political party executive committee of each county
within that delegate district shall elect one male and one female
resident of that county, all of whom shall constitute the political
party executive committee of that delegate district;

(3) In the thirtieth delegate district, the political party
executive committees in the counties of Randolph and Poca-
hontas shall each elect one male and one female resident of
their respective counties, all of whom shall constitute the
political party executive committee of the thirtieth delegate
district;

(4) Except as provided for in subdivision (3) of this sec-
tion, in delegate districts that contain one or more whole
counties together with a portion of another county, the political
party executive committees of each county wholly included
within the delegate district shall elect one male and one female
resident of that county, and the political party executive com-
mittee of each county only partially included within the
delegate district shall elect one resident of that county, who
shall reside within that portion of the county included in that
delegate district, all of whom shall constitute the political par-
ty executive committee of that delegate district.
(b) Vacancies in delegate district executive committees shall be filled by the political party executive committee of the county from which the vacating member was a resident and, in case only a portion of a county is included within a delegate district the person filling the vacancy shall reside in that portion of the county.

(c) Members of delegate district executive committees that are elected by county executive committees shall serve at the will and pleasure of the county executive committee that elected them.

(d) As soon as possible after their election, delegate district executive committees shall convene within their respective delegate districts, on the call of any member of the new delegate district executive committee, and proceed to select a chairman, a treasurer and a secretary, and such other officers as they may desire, each of which officers shall for their respective committees perform the duties that usually appertain to such offices.

(e) The delegate district executive committees elected at the primary election in the year one thousand nine hundred seventy-two, as well as any persons now or hereafter appointed to fill vacancies in such committees, shall continue in office until the first day of December, one thousand nine hundred seventy-four, for the purpose of making nominations to fill vacancies in the House of Delegates pursuant to section five, article ten of this chapter.

(f) For the purpose of filling vacancies in nomination on and after the first day of January, one thousand nine hundred seventy-four, pursuant to section nineteen, article five of this chapter, and for the purpose of filling vacancies in the office of member of the House of Delegates on and after the first day of December, one thousand nine hundred seventy-four, pursuant to section five, article ten of this chapter, delegate district executive committees shall reflect the apportionment of the House of Delegates as constituted by "The House of Delegates Apportionment Act of 1973."

(g) In case of a tie vote in delegate district executive committees in filling vacancies in office or in filling vacancies in nomination for members of the House of Delegates, the chairman of the state political party executive committee of that party shall cast the deciding vote.
§3-1-21. Printing of ballots; number and requirements; packaging and sealing.

It shall be the duty of the board of ballot commissioners for each county to provide printed ballots for every election for public officers in which the voters or any of the voters within the county participate, and cause to be printed, on the appropriate ballot, the name of every candidate whose name has been certified to or filed with the clerk of the circuit court of the county in any manner provided for in this chapter. In any case wherein the constitution or statutes limit or prescribe the number of candidates or elected officers to be selected by the voters in any district or other governmental subdivision, the ballot commissioners, in the preparation of such ballots, shall cause to be printed thereon, in plainly worded language, the number of candidates to be voted for in each district or other governmental subdivision: Provided, That in any election when more than one seat is to be filled for a public office, such instructions shall be centered across the ballot or electronic voting system so as to be stated only once and to apply to all parties. The printing of the ballots, and all other printing caused to be done by the board of ballot commissioners, shall be contracted for with the lowest responsible bidder. Ballots other than those caused to be printed by the respective boards of ballot commissioners, according to the provisions of this chapter, shall not be cast, received, or counted in any election.

For each such election to be held in their county and at least thirty days before the date of such election, the board of ballot commissioners shall cause to be printed official ballots to not more than one and one-fifth times the number of registered voters in the county. Provisions of article five of this chapter shall govern the printing of ballots for primary elections. The ballots so printed shall be wrapped and tied in packages, one for each precinct in their county, containing ballots to the number of one and one-twentieth times the number of registered voters in such precinct. Each package of ballots shall be sealed with wax, and plainly marked with the number of ballots therein, the name of the magisterial district, and the number of the voting place therein, to which it is intended to be sent. The names of the ballot commissioners shall also be endorsed thereon.
ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-8. 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 this article, pay a filing fee as follows:

(a) A candidate for president of the United States, for vice president of the United States, for United States senator, for member of the United States house of representatives, for governor and for all other state elective offices shall pay a fee equivalent to one percent of the annual salary of the office for which the candidate announces;

(b) A candidate for the office of judge of the circuit court and judge of any court of record of limited jurisdiction shall pay a fee equivalent to one percent of the total annual salary of the office paid from any and all sources for which the candidate announces;

(c) A candidate for member of the House of Delegates shall pay a fee of thirty-three dollars, and a candidate for state senator shall pay a fee of sixty-six dollars;

(d) A candidate for sheriff, prosecuting attorney, circuit clerk, county clerk, assessor, member of the county court and member of the county board of education shall pay a fee equivalent to one percent of the annual salary of the office for which the candidate announces: Provided, That the fee in no case shall be less than five dollars. 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 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; and a candidate for delegate from a congressional district shall pay a fee of ten 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 or senatorial district 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 such clerk from such fees shall be credited to the general county fund. Moneys received by the secretary of state from fees paid by candidates 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.

§3-5-13. 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 each name on the ballot.
president of the United States, for vice president of the United
States, for United States senator and for representative in Con-
gress, shall be placed in the first column of candidates; the
names of candidates for all state offices, including state senators
and members of the House of Delegates, and all other offices to
be filled by the voters of a political division greater than a
county, including the state executive committee, in the second
column; the names of all candidates for county offices, includ-
ing members of the congressional and senatorial district execu-
tive committees, shall be placed in the third column; the names
of all candidates for office in the magisterial districts shall be
placed in the fourth column; and the names of all candidates for
deleagtes to the national convention of the party shall be placed
in the fifth column and in counties using voting machines the
names of all candidates for delegates to the national convention
of the party shall be placed after the names of all other can-
didates for all of the other above specified offices.

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 a primary election, for
election of members of county board of education, shall be
printed in bold type, under the caption, “Nonpartisan 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
47  bottom of the list of names in that division and move up the
48  column so that the name that before was second shall be
49  first after the change. After the ballots are printed they
50  shall be kept in separate piles, one pile for each change in
51  position, and shall then be gathered by taking one from each
52  pile. Sample ballots shall be in the same form as the official
53  ballot, but the order of the names thereon need not be altered.
54  All ballots used in primary elections shall be printed on
55  paper conforming as nearly as practicable in weight, texture
56  and color to the samples furnished by the secretary of state,
57  and the paper shall be sufficiently thick so that the printing
58  cannot be discernible from the back. On the back of the
59  ballot shall be printed in black ink, and in plain legible, black
60  face pica type, the name of the political party as contained
61  in the heading or “Nonpartisan Board of Education,” as the
62  case may be, followed by the word “ballot.” Under this
63  designation shall be printed two blank lines followed by the
64  words “poll clerks.”

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-2. Preparation and form of general election ballots.

1  All ballots prepared under the provisions of this article shall
2  be printed in black ink on number two white book paper
3  sufficiently thick so that the printing cannot be distinguished
4  from the back, and shall contain the names of every candidate
5  whose nomination for any office to be voted for at the election
6  has been certified and filed according to law, and no others,
7  except that if it shall appear to the satisfaction of the ballot
8  commissioners that a person has been legally nominated as a
9  candidate for an office and is lawfully entitled to have his
10  name upon the ballot and no certificate of the nomination
11  has been received by the clerk of the circuit court, they shall
12  print the name of such candidate upon the ballot in its
13  proper place.
14  The tickets, except the heading, which shall be in display
15  type, shall be printed in eight point type; the name or
16  designation of the office and the residence of the candidate
17  in lower case letters, and the name of the candidate in capital
18  letters. The name and residence of the candidate may be
19  printed in the same line. The name of each candidate shall
be printed in a space defined by ruled lines, and with a black square on its left enclosed by heavy dark lines. If, upon any ticket, there be no candidate or candidates for a designated office, a blank space equal to the space that would be occupied by such name or names, if they were printed thereon, with the blank space herein provided for, shall be left. The heading of each party ticket including the name of the party and the device or emblem above and the large circle between the device or emblem and such name, shall be separated from the rest of the ticket by heavy lines and the circle above the name of the party in which the voter is to place the cross mark, if he desires to vote the straight ticket, shall be defined by heavier lines than the lines defining the blank spaces before the names of candidates, and such circle shall be surrounded by the following words printed in heavy face six point type: "For a straight ticket mark within this circle." Each party ticket shall be separated from other party tickets and bordered on either side by a heavy border, or a broad solid line, at least one sixteenth of an inch wide, and the edges of the ballot on either side trimmed off to within one-half inch of the border or solid line described.

Then names of the candidates shall be arranged on the ballot in tickets or lists, in separate columns under the respective party or political or other designation certified, each column or ticket containing the names of candidates nominated by the same political party and no others. In elections for presidential electors, the names of candidates for electors of any political party or group of petitioners, shall not be placed on the ballot, but shall, after nomination, be filed with the secretary of state. In place of their names, there shall be printed first on the ballots the names of the candidates for president and vice president, respectively, of each such party or group of petitioners, and they shall be arranged under the title of the office. Before the names of such candidates for president and vice president of each party, or group, a single square shall be printed, in front of a brace, in which the voter shall place the cross mark for the candidate of his choice for such offices. A vote for any of such candidates shall be a vote for the electors of the party by which such candidates were named, and whose names have been filed with the secretary of state.

The names of the candidates on each ticket shall be arranged...
in groups, with a heading over each group printed in heavy
faced eight point type to indicate the political divisions in which
such group is to be voted for. The arrangement of the ballot
shall conform as nearly as practicable to the plan here given:

<table>
<thead>
<tr>
<th>Device</th>
<th>Device</th>
<th>Device</th>
</tr>
</thead>
<tbody>
<tr>
<td>Republican Ticket</td>
<td>Democratic Ticket</td>
<td>Prohibition Ticket</td>
</tr>
<tr>
<td>For Governor</td>
<td>For Governor</td>
<td>For Governor</td>
</tr>
<tr>
<td>Name</td>
<td>Name</td>
<td>Name</td>
</tr>
</tbody>
</table>

The tickets of the several political parties shall be printed on
the ballot in parallel columns, each ticket in a separate column
headed by the chosen device, and the tickets in such order on
the ballot and the names of the office and the candidates
for the offices in such order on the ticket as the secretary
of state may direct, when practicable, as provided in section
thirteen, article five of this chapter, preference, however,
being given to the political party which had the highest
number of registered voters at the last preceding general
election, and so on. No ticket or list of candidates shall
be printed under the name of any party containing more
candidates for any office than are to be elected.

The ballot shall be so printed as to give each voter a
clear opportunity to designated by a cross mark in a large,
blank, circular space, three quarters of an inch in diameter,
below the device and above the name of the party at the
head of the ticket or list of candidates, his choice of a
party ticket and desire to vote for each and every candidate
thereon; and by a cross mark, in a blank, enclosed space on
the left and before the name of each candidate, his choice
of particular candidates.
86 On the back of the ballot shall be printed or stamped
87 in black ink the words “Official Ballot,” with the date of the
88 election, and underneath shall be two blank lines, followed by
89 the words “Poll Clerks.”

§3-6-5. Rules and procedures in elections other than primaries.

1 The provisions of article one of this chapter relating to elec-
2 tions generally shall govern and control arrangements and elec-
3 tion officials for the conduct of elections under this article.
4 The following rules and procedures shall govern the voter in
5 his voting for candidates in general and special elections:
6 (a) If the voter desires to vote a straight ticket, or,
7 in other words, for each and every candidate for one party for
8 whatever office nominated, he shall either:
9 (1) Make a cross mark in the circular space below the
device and above the name of the party at the head of the
ticket; or
10 (2) Make a cross mark on the left and opposite the name
of each and every candidate of such party in the blank space
provided therefor; or
11 (3) Mark out, by lines, all the tickets on the ballot, other
than the ticket he desires to vote.
12 (b) If the voter desires to vote a mixed ticket, or, in other
words, for candidates of different parties, he shall either:
13 (1) Omit making a cross in the circular space above the
name of the party, and make a cross mark in the blank space
before the name of each candidate for whom he desires to
vote on whatever ticket the name may be; or
14 (2) Make a cross mark in the circular space above the
name of the party for some of whose candidates he desires
to vote, and then make a cross mark before the name of
any candidate of any other party for whom he may desire
to vote; in which case the cross mark in the circular space
above the name of the party will cast his vote for every
candidate on the ticket of such party except for offices for
which candidates are marked on other party tickets, and the
cross marks before the name of such candidates will cast
his vote for them: Provided, If there are multiple candidates
under the name of any party for terms of equal duration in the
same office, and if the voter placing a straight ticket cross mark
in the circle above the name of one party also places a cross mark or cross marks before the name of a candidate or candidates for such office on another party ticket or column, then any and all candidates for such office having a cross mark before his or her name shall receive credit for a vote, but on the party ticket or column with the straight ticket cross mark, no candidate for such office before whose name a cross mark has not been placed shall receive credit for a vote unless: (1) The voter has marked through the name or names of the candidate or candidates for which the voter does not intend to vote in the straight party column, or (2) by reason of other markings or vacancies, the ballot clearly indicates which of the candidates for whom the voter intended to vote; but in no event shall any voter so mark his ballot so as to indicate an intention to vote for more persons than the total number to be elected for such office.

(3) Write with black lead pencil or other means the name of any person for whom he desires to vote in the space immediately below the name of the opposing candidate for the same office, on the ticket voted by him, and the name so written shall be counted.

If, in marking either a straight or mixed ticket as above defined, a cross mark is made in the circular space above the name of a party at the head of the ticket, and also one or more cross marks made before the name or names of candidates on the same ticket for offices for which candidates on other party tickets are not individually marked, such marks before the name of candidates on the ticket so marked shall be treated as surplusage and ignored.

If the voter desires to vote for any person whose name does not appear on the ticket, he may substitute the name by writing it with black lead pencil or other means in the proper place, and making a cross mark in the blank space at the left of the name so written.

If the voter marks more names than there are persons to be elected to an office, of if, for any reason, it is impossible to determine the voter's choice, for an office to be filled, the ballot shall not be counted for such office.

No ballot shall be rejected for any technical error which does not make it impossible to determine the voter's choice.
ARTICLE 10. FILLING VACANCIES.

§3-10-5. Vacancies in state Legislature.

Any vacancy in the office of state senator or member of the House of Delegates shall be filled by appointment by the governor, in each instance from a list of three legally qualified persons submitted by the county party executive committee in the case of a member of the House of Delegates who is elected from a county that is not situated in a delegate district, by the party executive committee of the delegate district in the case of a member of the House of Delegates who is elected from such delegate district, and by the party executive committee of the state senatorial district in the case of a state senator, of the party with which the person holding the office immediately preceding the vacancy was affiliated, and of the county or state senatorial district, respectively, in which he resided at the time of his election or appointment. If the vacating member of the House of Delegates resided in a county only a portion of which is included in his delegate district, all three of the qualified persons submitted shall be residents of that portion of the county in which the vacating delegate resided at the time of his election or appointment to the House of Delegates. The appointment to fill a vacancy in the House of Delegates shall be for the unexpired term. If the unexpired term in the office of the state senator be for less than two years and two months, the appointment shall be for the unexpired term. If the unexpired term be for a period longer than two years and two months, the appointment shall be until the next general election and until the election and qualification of a successor to the person appointed, at which general election the vacancy shall be filled by election for the unexpired term. Notice of an election to fill a vacancy in the office of state senator shall be given by the governor by proclamation and shall be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in the senatorial district. Nominations for candidates to fill such vacancy shall be made in the manner prescribed for nominating a candidate to fill a vacancy in the office of governor to be voted for at a general election.
The state senatorial district executive committee of the political party shall discharge the duties incident to state senator nominations devolving upon the party state executive committee in nominating a candidate for a state office.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Daniel Davis  
Chairman Senate Committee

Clarence T. Chastain, Jr.  
Chairman House Committee

Originated in the House.
Takes effect ninety days from passage.

Howard Stowers  
Clerk of the Senate

C.A. Blankenship)  
Clerk of the House of Delegates

W. T. Saxton, Jr.  
President of the Senate

Lewis H. Mann  
Speaker House of Delegates

The within is approved this the 30th day of April, 1973.

Aub.A. Shade, Jr.  
Governor