

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

Com. Sub. for
HOUSE BILL No. 2305

(By Mr. Speaker, Mr. Chambers)

— ● —

Passed Feb. 12, 1990

In Effect From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2305
(By MR. SPEAKER, MR. CHAMBERS)

[Passed February 12, 1990; in effect from passage.]

AN ACT to amend and reenact section seventeen, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article four-a of said chapter; to amend and reenact sections four and seven, article five of said chapter; to amend and reenact section three, article ten of said chapter; and to amend and reenact section one, article two, chapter fifty-one of said code, relating to the election of circuit judges generally; providing for numbered divisions within multi-judge circuits for election purposes only beginning with the primary and general elections to be held in the year one thousand nine hundred ninety-two; providing for the filing of a certificate of candidacy in the numbered division of the circuit for which the candidate seeks office; establishing the method whereby vacancies in the office of certain state officials, United States senators and circuit judges are filled; and providing for the nomination or election of the candidate for circuit judge receiving the highest number of votes within a division.

Be it enacted by the Legislature of West Virginia:

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

amended, be amended and reenacted; that section twelve, article four-a of said chapter be amended and reenacted; that sections four and seven, article five of said chapter be amended and reenacted; that section three, article ten of said chapter be amended and reenacted; and that section one, article two, chapter fifty-one of said code be amended and reenacted, all to read as follows:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-17. Election of circuit judges; county and district officers; magistrates.

1 There shall be elected, at the general election to be
2 held in the year one thousand nine hundred ninety-two,
3 and in every eighth year thereafter, one judge of the
4 circuit court of every judicial circuit entitled to but one
5 judge, and one judge for each numbered division of the
6 judicial circuit in those judicial circuits entitled to two
7 or more circuit judges; and at the general election to be
8 held in the year one thousand nine hundred ninety-two,
9 and in every fourth year thereafter, a sheriff, prosecut-
10 ing attorney, surveyor of lands, and the number of
11 assessors prescribed by law for the county, and the
12 number of magistrates prescribed by law for the county;
13 and at the general election to be held in the year one
14 thousand nine hundred ninety, and in every second year
15 thereafter, a commissioner of the county commission for
16 each county; and at the general election to be held in
17 the year one thousand nine hundred ninety-two, and in
18 every sixth year thereafter, a clerk of the county
19 commission and a clerk of the circuit court, for each
20 county.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-12. Ballot label arrangement in vote recording devices; when uniform numbering required; drawing by lot to determine position of candidates on ballots or ballot labels; sealing of devices; record of identifying numbers.

1 When the ballot labels are printed and delivered to the
2 clerk of the county commission, he shall place them in

3 the vote recording devices in such manner as will most
4 nearly conform to the arrangement prescribed for paper
5 ballots, and as will clearly indicate the party designation
6 or emblem of each candidate. Each column, row or page
7 containing the names of the office and candidates for
8 such office shall be so arranged as to clearly indicate
9 the office for which the candidate is running. The names
10 of the candidates for each office indicated shall be
11 placed on the ballot label. The ballot label and the
12 arrangement of the ballot shall conform as nearly as
13 practicable to the plan herein given:

Democratic Ticket		Republican Ticket	
For House of Delegates		For House of Delegates	
Name		Name	
70 ←		→ 69	
72 ←		→ 71	
74 ←		→ 73	
76 ←		→ 75	

25 The secretary of state shall assign a uniform number
26 applicable to all counties using electronic voting for all
27 straight party tickets and for all candidates running for
28 offices to be voted upon by all of the voters of the state.
29 The number so designated by the secretary of state shall
30 be used by all counties using electronic voting systems
31 irrespective of the fact that in one or more such counties
32 the number or numbers so designated may result in
33 other than strict sequential ballot arrangement. After
34 taking into account the numbers so assigned by the
35 secretary of state to straight party tickets and all
36 candidates for offices to be voted upon by all the voters
37 of the state, the clerk of the circuit court shall appoint
38 a time at which all candidates whose ballot positions are
39 to be determined by drawing by lot are to appear before
40 the clerk for such drawing. Candidates whose ballot
41 positions are to be determined by drawing by lot are
42 those candidates for an office for which the voters will

43 elect more than one person to represent the electoral
44 districts, including, but not limited to, house of delegates
45 contests in multi-delegate districts, contests for the
46 office of county board of education, magistrate and
47 delegate to a political party national convention. The
48 clerk shall give due notice of such time to each candidate
49 by United States mail, directed to the address given by
50 the candidate in his announcement of candidacy. It shall
51 be the duty of the secretary of state to provide each
52 circuit clerk with a list of names and addresses of
53 candidates running for office in such clerk's county who
54 have filed their announcement of candidacy with the
55 secretary of state, and who are candidates whose ballot
56 positions are to be determined by drawing by lot. At the
57 time appointed, all such candidates whose ballot
58 positions are to be determined by lot shall assemble in
59 the office of such clerk and such candidates shall then
60 proceed to draw by lot to determine where their names
61 shall appear on the ballots or ballot labels. The number
62 so drawn by each such candidate shall determine where
63 his or her name shall appear on the ballots or ballot
64 labels. In the event any candidate or candidates fail to
65 appear at the time appointed, the clerk shall draw for
66 such absent candidate or candidates in the presence of
67 those candidates assembled, if any, and the number so
68 drawn by the clerk shall determine where the name of
69 any absent candidate or candidates shall appear on the
70 ballots or ballot labels. The circuit clerk shall record the
71 number drawn by each candidate and his name in an
72 appropriate book. The ballot commissioners shall
73 proceed to have the ballot labels printed according to the
74 provisions of this article. After receiving the printed
75 ballot labels, the clerk of the circuit court shall ascertain
76 their accuracy and the clerk of the county commission
77 shall proceed to have the ballot labels placed in the vote
78 recording devices. The clerk of the county commission
79 shall then seal the vote recording devices so as to
80 prevent tampering with ballot labels, and enter in an
81 appropriate book, opposite the number of each precinct,
82 the identifying or distinguishing number of the specific
83 vote recording device or devices to be used in that
84 precinct.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**§3-5-4. Nomination of candidates in primary elections.**

1 At each primary election, the candidate or candidates
2 of each political party for all offices to be filled at the
3 ensuing general election by the voters of the entire state,
4 of each congressional district, of each state senatorial
5 district, of each delegate district, of each judicial circuit
6 of West Virginia, of each county, and of each magisterial
7 district in the state shall be nominated by the voters of
8 the different political parties, except that no presiden-
9 tial elector shall be nominated at a primary election.

10 In primary elections a plurality of the votes cast shall
11 be sufficient for the nomination of candidates for office.
12 Where only one candidate of a political party for any
13 office in a political division, including party committee-
14 men and delegates to national conventions, is to be
15 chosen, or where a judicial circuit has two or more
16 circuit judges and one circuit judge is to be chosen for
17 each numbered division within the circuit, the candidate
18 receiving the highest number of votes therefor in the
19 primary election shall be declared the party nominee for
20 such office. Where two or more such candidates are to
21 be chosen in the primary election, the candidates
22 constituting the proper number to be so chosen who
23 shall receive the highest number of votes cast in the
24 political division in which they are candidates shall be
25 declared the party nominees and choices for such offices,
26 except that: (1) Candidates for the office of commis-
27 sioner of the county commission shall be nominated and
28 elected in accordance with the provisions of section ten,
29 article nine of the Constitution of the state of West
30 Virginia; (2) members of county boards of education
31 shall be elected at primary elections in accordance with
32 the provisions of sections five and six of this article; (3)
33 candidates for the house of delegates shall be nominated
34 and elected in accordance with the residence restrictions
35 provided in section two, article two, chapter one of this
36 code; and (4) in judicial circuits having numbered
37 divisions, each numbered division shall be tallied
38 separately and the candidate in each division receiving

39 a plurality of the votes cast shall be declared the party
40 nominee for the office in that numbered division.

41 In case of tie votes between candidates for party
42 nominations or elections in primary elections, the choice
43 of the political party shall be determined by lot by the
44 executive committee of the party for the political
45 division in which such persons are candidates.

**§3-5-7. Filing announcements of candidacies; require-
ments; when section applicable.**

1 Any person who is eligible to hold and seeks to hold
2 an office (including that of member of any political
3 party executive committee) shall file with the secretary
4 of state, if it be an office to be filled by the voters of
5 more than one county, or with the clerk of the circuit
6 court, if it be for an office to be filled by the voters of
7 a county or subdivision less than a county, a certificate
8 declaring himself a candidate for the nomination for
9 such office, which certificate shall be in form or effect
10 as follows:

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

25

26 _____ Candidate

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

29

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

32 Any candidate for circuit judge in a judicial circuit
33 containing numbered divisions shall state in the
34 certificate the numbered division in the judicial circuit
35 for which the candidate seeks nomination. No person
36 shall be a candidate for circuit judge in more than one
37 such numbered division.

38 Any candidate for delegate to the national convention
39 of any political party shall provide, on a form prescribed
40 by the secretary of state, the information required in the
41 certificate hereinbefore described and shall also provide
42 the name of the person he prefers as the presidential
43 nominee of his party upon the first convention ballot, or
44 if he has no preference, a statement that he is uncom-
45 mitted: *Provided*, That any candidate for delegate may
46 change his statement of presidential preference by
47 notifying the secretary of state by registered letter, at
48 least seventy-seven days prior to the day fixed for the
49 primary election.

50 Such announcement shall be signed and acknowl-
51 edged by the candidate before some officer qualified to
52 administer oaths, who shall certify the same. Any person
53 who knowingly provides false information on said
54 certificate shall be guilty of an offense and shall be
55 punished as set forth in section twenty-three, article
56 nine of this chapter.

57 Such certificate shall be filed with the secretary of
58 state or the clerk of the circuit court, as the case may
59 be, not earlier than the second Monday in January next
60 preceding the primary election day, and not later than
61 the first Saturday of February next preceding the
62 primary election day, and must be received before
63 midnight, eastern standard time, of that day or, if
64 mailed, shall be postmarked before that hour.

65 The provisions of this section shall apply to the primary
66 election held in the year one thousand nine hundred ninety
67 and every primary election held thereafter.

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, United States senators and judges.

1 Any vacancy occurring in the office of secretary of

2 state, auditor, treasurer, attorney general, commissioner
3 of agriculture, United States senator, judge of the
4 supreme court of appeals, or in any office created or
5 made elective, to be filled by the voters of the entire
6 state, or judge of a circuit court, shall be filled by the
7 governor of the state by appointment. If the unexpired
8 term of a judge of the supreme court of appeals, or a
9 judge of the circuit court, be for less than two years; or
10 if the unexpired term of any other office named in this
11 section be for a period of less than two years and six
12 months, the appointment to fill the vacancy shall be for
13 the unexpired term. If the unexpired term of any office
14 be for a longer period than above specified, the
15 appointment shall be until a successor to the office has
16 timely filed a certificate of candidacy, has been
17 nominated at the primary election next following such
18 timely filing and has thereafter been elected and
19 qualified to fill the unexpired term. Proclamation of any
20 election to fill an unexpired term shall be made by the
21 governor of the state, and, in the case of an office to be
22 filled by the voters of the entire state, shall be published
23 prior to such election as a Class II-0 legal advertisement
24 in compliance with the provisions of article three,
25 chapter fifty-nine of this code, and the publication area
26 for such publication shall be each county of the state.
27 If the election be to fill a vacancy in the office of judge
28 of a circuit court, the proclamation shall be published
29 prior to such election as a Class II-0 legal advertisement
30 in compliance with the provisions of article three,
31 chapter fifty-nine of this code, and the publication area
32 for such publication shall be each county in the judicial
33 circuit.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

- 1 (a) The state shall be divided into the following
- 2 judicial circuits with the following number of judges:
- 3 The counties of Brooke, Hancock and Ohio shall

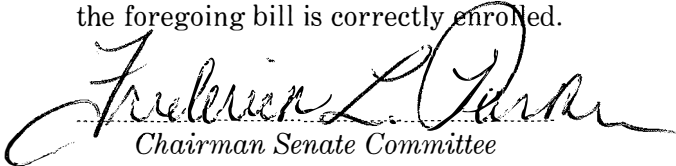
4 constitute the first circuit and shall have four judges;
5 the counties of Marshall, Tyler and Wetzel shall
6 constitute the second circuit and shall have two judges;
7 the counties of Doddridge, Pleasants and Ritchie shall
8 constitute the third circuit and shall have one judge; the
9 counties of Wood and Wirt shall constitute the fourth
10 circuit and shall have three judges; the counties of
11 Calhoun, Jackson and Roane shall constitute the fifth
12 circuit and shall have one judge; the county of Cabell
13 shall constitute the sixth circuit and shall have four
14 judges; the county of Logan shall constitute the seventh
15 circuit and shall have two judges; the county of
16 McDowell shall constitute the eighth circuit and shall
17 have two judges; the county of Mercer shall constitute
18 the ninth circuit and shall have two judges; the county
19 of Raleigh shall constitute the tenth circuit and shall
20 have three judges; the counties of Greenbrier, Monroe,
21 Pocahontas and Summers shall constitute the eleventh
22 circuit and shall have two judges; the county of Fayette
23 shall constitute the twelfth circuit and shall have two
24 judges; the county of Kanawha shall constitute the
25 thirteenth circuit and shall have seven judges; the
26 counties of Braxton, Clay, Gilmer and Webster shall
27 constitute the fourteenth circuit and shall have two
28 judges; the county of Harrison shall constitute the
29 fifteenth circuit and shall have two judges; the county
30 of Marion shall constitute the sixteenth circuit and shall
31 have two judges; the county of Monongalia shall
32 constitute the seventeenth circuit and shall have two
33 judges; the county of Preston shall constitute the
34 eighteenth circuit and shall have one judge; the counties
35 of Barbour and Taylor shall constitute the nineteenth
36 circuit and shall have one judge; the county of Randolph
37 shall constitute the twentieth circuit and shall have one
38 judge; the counties of Grant, Mineral and Tucker shall
39 constitute the twenty-first circuit and shall have two
40 judges; the counties of Hampshire, Hardy and Pendleton
41 shall constitute the twenty-second circuit and shall have
42 one judge; the counties of Berkeley, Jefferson and
43 Morgan shall constitute the twenty-third circuit and
44 shall have one judge; the county of Wayne shall
45 constitute the twenty-fourth circuit and shall have one

46 judge; the counties of Lincoln and Boone shall constitute
47 the twenty-fifth circuit and shall have two judges; the
48 counties of Lewis and Upshur shall constitute the
49 twenty-sixth circuit and shall have one judge; the county
50 of Wyoming shall constitute the twenty-seventh circuit
51 and shall have one judge; the county of Nicholas shall
52 constitute the twenty-eighth circuit and shall have one
53 judge; the counties of Mason and Putnam shall consti-
54 tute the twenty-ninth circuit and shall have two judges;
55 the county of Mingo shall constitute the thirtieth circuit
56 and shall have one judge; and the counties of Berkeley,
57 Jefferson and Morgan shall constitute the thirty-first
58 circuit and shall have one judge.

59 (b) The terms of office of all circuit court judges shall
60 be for eight years, the first commencing on the first day
61 of January, one thousand nine hundred eighty-five, and
62 ending on the thirty-first day of December, one thousand
63 nine hundred ninety-two. Subsequent terms of said
64 judges shall be for eight years.

65 (c) Beginning with the primary and general elections
66 to be conducted in the year one thousand nine hundred
67 ninety-two, in all judicial circuits having two or more
68 judges there shall be, for election purposes, numbered
69 divisions corresponding to the number of circuit judges
70 in each circuit. Each judge shall be elected at large from
71 the entire circuit. In each numbered division of a
72 judicial circuit, the candidates for nomination or
73 election shall be voted upon and the votes cast for the
74 candidates in each division shall be tallied separately
75 from the votes cast for candidates in other numbered
76 divisions within the circuit. The candidate receiving the
77 highest number of the votes cast within a numbered
78 division shall be nominated or elected, as the case may
79 be.

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


Chairman Senate Committee


Chairman House Committee

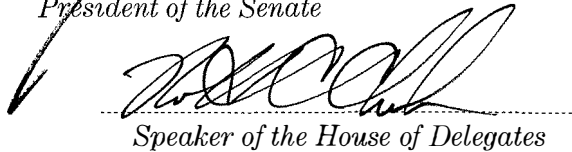
Originating in the House.

Takes effect from passage.

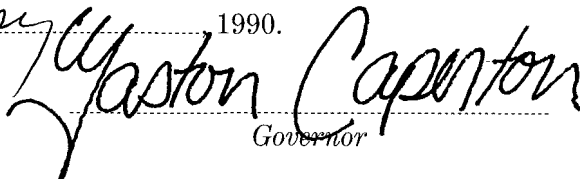

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 21ST
day of February 1990.


Governor

PRESENTED TO THE

GOVERNOR

Date: 2/16/90

Time 3:10 PM