WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

ENROLLED

Com. Auth. for

HOUSE BILL No. 2305

(By Mr. Speaker, Mr. Chambers)

Passed

Feb. 12, 1990

In Effect

From Passage

C-641
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.

There shall be elected, at the general election to be held in the year one thousand nine hundred ninety-two, and in every eighth year thereafter, one judge of the circuit court of every judicial circuit entitled to but one judge, and one judge for each numbered division of the judicial circuit in those judicial circuits entitled to two or more circuit judges; and at the general election to be held in the year one thousand nine hundred ninety-two, and in every fourth year thereafter, a sheriff, prosecuting attorney, surveyor of lands, and the number of assessors prescribed by law for the county, and the number of magistrates prescribed by law for the county; and at the general election to be held in the year one thousand nine hundred ninety, and in every second year thereafter, a commissioner of the county commission for each county; and at the general election to be held in the year one thousand nine hundred ninety-two, and in every sixth year thereafter, a clerk of the county commission and a clerk of the circuit court, for each 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.

When the ballot labels are printed and delivered to the clerk of the county commission, he shall place them in
the vote recording devices in such manner as will most nearly conform to the arrangement prescribed for paper ballots, and as will clearly indicate the party designation or emblem of each candidate. Each column, row or page containing the names of the office and candidates for such office shall be so arranged as to clearly indicate the office for which the candidate is running. The names of the candidates for each office indicated shall be placed on the ballot label. The ballot label and the arrangement of the ballot shall conform as nearly as practicable to the plan herein given:

<table>
<thead>
<tr>
<th>Democratic Ticket</th>
<th>Republican Ticket</th>
</tr>
</thead>
<tbody>
<tr>
<td>For House of Delegates</td>
<td>For House of Delegates</td>
</tr>
<tr>
<td>Name</td>
<td>Name</td>
</tr>
<tr>
<td>70 ←</td>
<td>69</td>
</tr>
<tr>
<td>72 ←</td>
<td>71</td>
</tr>
<tr>
<td>74 ←</td>
<td>73</td>
</tr>
<tr>
<td>76 ←</td>
<td>75</td>
</tr>
</tbody>
</table>

The secretary of state shall assign a uniform number applicable to all counties using electronic voting for all straight party tickets and for all candidates running for offices to be voted upon by all of the voters of the state. The number so designated by the secretary of state shall be used by all counties using electronic voting systems irrespective of the fact that in one or more such counties the number or numbers so designated may result in other than strict sequential ballot arrangement. After taking into account the numbers so assigned by the secretary of state to straight party tickets and all candidates for offices to be voted upon by all the voters of the state, the clerk of the circuit court shall appoint a time at which all candidates whose ballot positions are to be determined by drawing by lot are to appear before the clerk for such drawing. Candidates whose ballot positions are to be determined by drawing by lot are those candidates for an office for which the voters will
elect more than one person to represent the electoral
districts, including, but not limited to, house of delegates
contests in multi-delegate districts, contests for the
office of county board of education, magistrate and
delegate to a political party national convention. The
clerk shall give due notice of such time to each candidate
by United States mail, directed to the address given by
the candidate in his announcement of candidacy. It shall
be the duty of the secretary of state to provide each
circuit clerk with a list of names and addresses of
candidates running for office in such clerk’s county who
have filed their announcement of candidacy with the
secretary of state, and who are candidates whose ballot
positions are to be determined by drawing by lot. At the
time appointed, all such candidates whose ballot
positions are to be determined by lot shall assemble in
the office of such clerk and such candidates shall then
proceed to draw by lot to determine where their names
shall appear on the ballots or ballot labels. The number
so drawn by each such candidate shall determine where
his or her name shall appear on the ballots or ballot
labels. In the event any candidate or candidates fail to
appear at the time appointed, the clerk shall draw for
such absent candidate or candidates in the presence of
those candidates assembled, if any, and the number so
drawn by the clerk shall determine where the name of
any absent candidate or candidates shall appear on the
ballots or ballot labels. The circuit clerk shall record the
number drawn by each candidate and his name in an
appropriate book. The ballot commissioners shall
proceed to have the ballot labels printed according to the
provisions of this article. After receiving the printed
ballot labels, the clerk of the circuit court shall ascertain
their accuracy and the clerk of the county commission
shall proceed to have the ballot labels placed in the vote
recording devices. The clerk of the county commission
shall then seal the vote recording devices so as to
prevent tampering with ballot labels, and enter in an
appropriate book, opposite the number of each precinct,
the identifying or distinguishing number of the specific
vote recording device or devices to be used in that
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 of each political party for all offices to be filled at the ensuing general election by the voters of the entire state, of each congressional district, of each state senatorial district, of each delegate district, of each judicial circuit of West Virginia, of each county, and of each magisterial district in the state shall be nominated by the voters of the different political parties, except that no presidential elector shall be nominated at a primary election.

2 In primary elections a plurality of the votes cast shall be sufficient for the nomination of candidates for office.

3 Where only one candidate of a political party for any office in a political division, including party committee-men and delegates to national conventions, is to be chosen, or where a judicial circuit has two or more circuit judges and one circuit judge is to be chosen for each numbered division within the circuit, the candidate receiving the highest number of votes therefor in the primary election shall be declared the party nominee for such office. Where two or more such candidates are to be chosen in the primary election, the candidates constituting the proper number to be so chosen who shall receive the highest number of votes cast in the political division in which they are candidates shall be declared the party nominees and choices for such offices, except that: (1) Candidates for the office of commissioner of the county commission shall be nominated and elected in accordance with the provisions of section ten, article nine of the Constitution of the state of West Virginia; (2) members of county boards of education shall be elected at primary elections in accordance with the provisions of sections five and six of this article; (3) candidates for the house of delegates shall be nominated and elected in accordance with the residence restrictions provided in section two, article two, chapter one of this code; and (4) in judicial circuits having numbered divisions, each numbered division shall be tallied separately and the candidate in each division receiving
a plurality of the votes cast shall be declared the party nominee for the office in that numbered division.

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

§3-5-7. Filing announcements of candidacies; requirements; when section applicable.

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

I, ________________________, hereby certify that I am a candidate for the nomination for the office of ____________ to represent the ___________ Party, and desire my name printed on the official ballot of said party to be voted at the primary election to be held on the ____ day of ____________, 19_____; that I am a legally qualified voter of the County of ____________, State of West Virginia; that my residence is number __ of ____________ Street in the City (or Town) of ____________ in ____________ County in said State; that I am eligible to hold the said office; that I am a member of and affiliated with said political party; that I am a candidate for said office in good faith.

Candidate

Signed and acknowledged before me this __________

day of _______________, 19_____.

Signature and official title of person before whom signed.
Any candidate for circuit judge in a judicial circuit containing numbered divisions shall state in the certificate the numbered division in the judicial circuit for which the candidate seeks nomination. No person shall be a candidate for circuit judge in more than one such numbered division.

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

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

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

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

ARTICLE 10. FILLING VACANCIES.

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

Any vacancy occurring in the office of secretary of
state, auditor, treasurer, attorney general, commissioner
of agriculture, United States senator, judge of the
supreme court of appeals, or in any office created or
made elective, to be filled by the voters of the entire
state, or judge of a circuit court, shall be filled by the
governor of the state by appointment. If the unexpired
term of a judge of the supreme court of appeals, or a
judge of the circuit court, be for less than two years; or
if the unexpired term of any other office named in this
section be for a period of less than two years and six
months, the appointment to fill the vacancy shall be for
the unexpired term. If the unexpired term of any office
be for a longer period than above specified, the
appointment shall be until a successor to the office has
timely filed a certificate of candidacy, has been
ominated at the primary election next following such
timely filing and has thereafter been elected and
qualified to fill the unexpired term. Proclamation of any
election to fill an unexpired term shall be made by the
governor of the state, and, in the case of an office to be
filled by the voters of the entire state, 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 of the state.
If the election be to fill a vacancy in the office of judge
of a circuit court, the proclamation 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 judicial
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.

(a) The state shall be divided into the following
judicial circuits with the following number of judges:

The counties of Brooke, Hancock and Ohio shall
constitute the first circuit and shall have four judges; the counties of Marshall, Tyler and Wetzel shall constitute the second circuit and shall have two judges; the counties of Doddridge, Pleasants and Ritchie shall constitute the third circuit and shall have one judge; the counties of Wood and Wirt shall constitute the fourth circuit and shall have three judges; the counties of Calhoun, Jackson and Roane shall constitute the fifth circuit and shall have one judge; the county of Cabell shall constitute the sixth circuit and shall have four judges; the county of Logan shall constitute the seventh circuit and shall have two judges; the county of McDowell shall constitute the eighth circuit and shall have two judges; the county of Mercer shall constitute the ninth circuit and shall have two judges; the county of Raleigh shall constitute the tenth circuit and shall have three judges; the counties of Greenbrier, Monroe, Pocahontas and Summers shall constitute the eleventh circuit and shall have two judges; the county of Fayette shall constitute the twelfth circuit and shall have two judges; the county of Kanawha shall constitute the thirteenth circuit and shall have seven judges; the counties of Braxton, Clay, Gilmer and Webster shall constitute the fourteenth circuit and shall have two judges; the county of Harrison shall constitute the fifteenth circuit and shall have two judges; the county of Marion shall constitute the sixteenth circuit and shall have two judges; the county of Monongalia shall constitute the seventeenth circuit and shall have two judges; the county of Presto shall constitute the eighteenth circuit and shall have one judge; the counties of Barbour and Taylor shall constitute the nineteenth circuit and shall have one judge; the county of Randolph shall constitute the twentieth circuit and shall have one judge; the counties of Grant, Mineral and Tucker shall constitute the twenty-first circuit and shall have two judges; the counties of Hampshire, Hardy and Pendleton shall constitute the twenty-second circuit and shall have one judge; the counties of Berkeley, Jefferson and Morgan shall constitute the twenty-third circuit and shall have one judge; the county of Wayne shall constitute the twenty-fourth circuit and shall have one judge;
judge; the counties of Lincoln and Boone shall constitute
the twenty-fifth circuit and shall have two judges; the
counties of Lewis and Upshur shall constitute the
twenty-sixth circuit and shall have one judge; the county
of Wyoming shall constitute the twenty-seventh circuit
and shall have one judge; the county of Nicholas shall
constitute the twenty-eighth circuit and shall have one
judge; the counties of Mason and Putnam shall consti-
tute the twenty-ninth circuit and shall have two judges;
the county of Mingo shall constitute the thirtieth circuit
and shall have one judge; and the counties of Berkeley,
Jefferson and Morgan shall constitute the thirty-first
circuit and shall have one judge.

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

(c) Beginning with the primary and general elections
to be conducted in the year one thousand nine hundred
ninety-two, in all judicial circuits having two or more
judges there shall be, for election purposes, numbered
divisions corresponding to the number of circuit judges
in each circuit. Each judge shall be elected at large from
the entire circuit. In each numbered division of a
judicial circuit, the candidates for nomination or
election shall be voted upon and the votes cast for the
candidates in each division shall be tallied separately
from the votes cast for candidates in other numbered
divisions within the circuit. The candidate receiving the
highest number of the votes cast within a numbered
division shall be nominated or elected, as the case may
be.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Earls
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect from passage.

Bassett Stilson
Clerk of the Senate

Donald L. Keddy
Clerk of the House of Delegates

J. Paul Birt ette
President of the Senate

Speaker of the House of Delegates

The within is approved this the 81st day of

February 1990.

Winston Caperton
Governor