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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991

ENROLLED

SENATE BILL NO. 629

(By Senator Humphreys, et al.)

PASSED March 9, 1991

In Effect 90 days from Passage

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Senate Bill No. 629

(BY SENATORS HUMPHREYS, WIEDEBUSCH, BAILEY,
HOLLIDAY AND DALTON)

[Passed March 9, 1991; in effect ninety days from passage.]

AN ACT to repeal section forty-seven, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections nine, twenty-one and forty-four, article one; section two-b, article three; sections ten and eleven, article four; sections eleven and twelve, article four-a; sections two, three, four, seven, eleven, thirteen and nineteen, article five; section two, article six; and sections one, six, seven and eight, article ten, all of said chapter; to further amend article five of said chapter by adding thereto a new section, designated section thirteen-a; and to amend and reenact section two, article five, chapter eighteen of said code, all relating to the conduct of elections; providing for the composition of political party committees; providing for the terms of office for the transition in the realignment of the districts; authorizing committee to conduct organizational meeting following certification of election; requiring that meeting of political party executive committees be held only after notice is given; setting forth requirements of official meetings; designating persons responsible for the printing of ballots; reducing number of ballots which must be printed; prescribing the method for the printing of ballots; providing for the packaging

of ballots; updating certain terminology; extending the date for the delivery of certain ballots; requiring clerk of circuit court to examine ballot and ballot labels used in voting machines and in electronic voting systems for accuracy; prescribing method by which ballot error may be corrected; increasing fees and expenses paid to election officials; changing occasions when disabled voter's name is removed from special absentee voting list; removing ability to change ballots by labels; rearranging certain code provisions; revising provisions establishing drawing by vote to determine position on ballot; setting forth ballot label arrangement requirements in voting machines; revising the ballot label requirements for electronic voting systems; requiring that nonpartisan offices and any questions to be voted upon in electronic voting systems be placed on separate pages; permitting political parties to adopt a plan for the election of delegates and alternative delegates to national conventions consistent with their national party rules; setting forth requirements of plan; requiring candidates for the presidency to pay a filing fee or to petition for waiver thereof; eliminating the requirement that political party executive committees determine the votes in primary elections by lot; setting forth requirements of certificate of announcement; prohibiting the filing of candidacy of certain persons affiliated with another political party within sixty days prior to filing; prescribing method by which certification of candidacy may be refused; prescribing and clarifying certain candidacy filing procedures; when person may be guilty of false swearing and subject to criminal penalties; when commitment for delegates to national convention must be received; determining when candidate is or may be deemed "uncommitted"; clarifying prohibition against running for two offices; exceptions; prohibiting the certification of a candidate who fails to withdraw from one of two offices filed for; changing the deadline for candidates to withdraw and have name removed from ballot; removing discretion of ballot commissioners to certify candidates; establishing procedure for notice to voter of candidate's death; reestablishing deadlines for the filling of vacancies; setting

forth ballot preparation procedures for primary elections; prescribing ballot titles and headings; setting forth ballot printing requirements; specifying order in which offices are to be placed on the ballot; eliminating notation of names on paper ballots; establishing names of candidates are to be alphabetized; establishing uniform date for drawing by lot; providing for the placement of names of candidates for delegate to national convention; clarifying and setting deadlines for the filling of vacancies by executive committees or the chair thereof; setting forth when vacancy may be filled; authorizing election commission to determine personal extenuating circumstances for withdrawal; establishing special filing period for board of education races when certain vacancies occur; setting forth ballot preparation procedures for all voting systems; clarifying instructions on straight ticket voting and requiring that such instructions be placed immediately before the listing of candidates in multi-candidate elections; establishing uniform date for drawing by lot by certain candidates in the general election; limiting issues which may be placed on the ballot; eliminating short unexpired terms occurring between general election and commencement of new term; requiring that vacancies in county offices be filled with persons who are of the same political party as the person who vacated the office; establishing procedure for the filling of vacancies on the board of education; and setting new deadlines for the filling of a vacancy prior to an election.

Be it enacted by the Legislature of West Virginia:

That section forty-seven, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections nine, twenty-one and forty-four, article one; section two-b, article three; sections ten and eleven, article four; sections eleven and twelve, article four-a; sections two, three, four, seven, eleven, thirteen and nineteen, article five; section two, article six; and sections one, six, seven and eight, article ten of said chapter be amended and reenacted; that article five of said chapter be further amended by adding thereto a new section, designated section thirteen-a; and that section

two, article five, chapter eighteen of said code be amended and reenacted, all to read as follows:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-9. Political party committees; how composed; organization.

1 At the primary election in the year one thousand
2 nine hundred ninety-four, and in every fourth year
3 thereafter, the voters of each political party in each
4 senatorial district shall elect two male and two female
5 members of the state executive committee of the
6 party. In senatorial districts containing two or more
7 counties, not more than two such elected committee
8 members shall be residents of the same county. The
9 committee, when convened and organized as herein
10 provided, shall appoint three additional members of
11 the committee from the state at large. When senatorial
12 districts are realigned following a decennial census,
13 members of the state executive committee previously
14 elected or appointed shall continue in office until the
15 expiration of their terms, and appointments made to
16 fill vacancies on the committee until the next election
17 of executive committee members shall be selected
18 from the previously established districts. At the first
19 election of executive committee members following
20 the realignment of senatorial districts, members shall
21 be elected from the newly established districts.

22 At such primary election, the voters of each political
23 party in each county shall elect one male and one
24 female member of the party's executive committee of
25 the congressional district, of the senatorial district and
26 of the delegate district in which such county is
27 situated, if such county be situated in a multi-county
28 senatorial or delegate district. When districts are
29 realigned following a decennial census, members of an
30 executive committee previously elected in a county to
31 represent that county to a congressional or multi-
32 county senatorial or delegate district executive com-
33 mittee shall continue to represent that county in the
34 appropriate newly constituted multi-county district
35 until the expiration of their terms: *Provided*, That the

36 county executive committee of the political party shall
37 determine which previously elected members shall
38 represent the county if the number of multi-county
39 senatorial or delegate districts in the county is
40 decreased; and shall appoint members to complete the
41 remainder of the term if the number of such districts
42 is increased.

43 At the same time such voters of the county in each
44 magisterial district or executive committee district, as
45 the case may be, shall elect one male and one female
46 member of the party's county executive committee,
47 except that in counties having three executive com-
48 mittee districts there shall be elected two male and
49 two female members of the party's executive commit-
50 tee from each magisterial or executive committee
51 district.

52 For the purpose of complying with the provisions of
53 this section, the county commission shall create such
54 executive committee districts as they shall determine,
55 which such districts shall not be fewer than the
56 number of magisterial districts in such counties, nor
57 shall they exceed in number the following: Forty for
58 counties having a population of one hundred thousand
59 persons or more; thirty for counties having a popula-
60 tion of fifty thousand to one hundred thousand; twenty
61 for counties having a population of twenty thousand to
62 fifty thousand; and such districts in counties having a
63 population of less than twenty thousand persons shall
64 be coextensive with the magisterial districts.

65 The executive committee districts shall be as nearly
66 equal in population as practicable, and shall each be
67 composed of compact, contiguous territory. The county
68 commissions shall change the territorial boundaries of
69 such districts as required by the increase or decrease
70 in the population of such districts as determined by a
71 decennial census. Such changes must be made within
72 two years following such census.

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

76 term of office of all members of executive committees
77 elected at the primary election in the year one
78 thousand nine hundred ninety-four, shall begin on the
79 first day of July, following said primary, and shall
80 continue for four years thereafter and until their
81 successors are elected and qualified. Vacancies in the
82 state executive committee shall be filled by the
83 members of the committee for the unexpired term.
84 Vacancies in the party's executive committee of a
85 congressional district, senatorial district, delegate
86 district or county shall be filled by the party's execu-
87 tive committee of the county in which such vacancy
88 exists, and shall be for the unexpired term.

89 As soon as possible after the certification of the
90 election of the new executive committees, as herein
91 provided, they shall convene an organizational meet-
92 ing within their respective political divisions, on the
93 call of the chairman of corresponding outgoing execu-
94 tive committees, or by any member of the new
95 executive committee in the event there is no corres-
96 ponding outgoing executive committee and proceed to
97 select a chairman, a treasurer and a secretary, and
98 such other officers as they may desire, each of which
99 officers shall for their respective committees perform
100 the duties that usually appertain to such offices. The
101 organizational meeting may be conducted prior to the
102 beginning of the term, but no official action other than
103 the election of officers and the appointment to fill
104 vacancies on the committee may be made before the
105 first day of July.

106 Any meeting of any political party executive com-
107 mittee shall be held only after public notice and notice
108 to each member is given according to party rules and
109 shall be open to all members affiliated with such
110 party. Meetings shall be conducted according to party
111 rules, all official actions shall be made by voice vote,
112 and minutes shall be maintained and shall be open to
113 inspection by members affiliated with such party.

§3-1-21. Printing of official and sample ballots; number; packaging and delivery, correction of ballots.

1 (a) The board of ballot commissioners for each
2 county shall provide the ballots and sample ballots
3 necessary for the conduct of every election for public
4 officers in which the voters of the county participate.

5 (b) The persons who shall provide the ballots neces-
6 sary for the conduct of all other elections shall be:

7 (1) The secretary of state, for any statewide special
8 election ordered by the Legislature;

9 (2) The board of ballot commissioners, for any
10 county-wide special election ordered by the county
11 commission; or

12 (3) The board of education, for any special levy or
13 bond election ordered by the board of education; or

14 (4) The municipal board of ballot commissioners, for
15 any election conducted for or within a municipality,
16 except an election in which the matter affecting the
17 municipality is placed on the county ballot at a county
18 election. Ballots other than those caused to be printed
19 by the proper authorities as specified in this section
20 shall not be cast, received, or counted in any election.

21 (c) When paper ballots are used, the total number of
22 regular official ballots printed shall equal one and one-
23 twentieth times the number of registered voters
24 eligible to vote that ballot. The circuit clerk shall
25 determine the number of absentee official ballots,
26 which number shall be not more than one-tenth of the
27 number of registered voters eligible to vote the ballot.

28 (d) The number of regular official ballots packaged
29 for each precinct shall equal the number of registered
30 voters of the precinct. The remaining regular official
31 ballots shall be packaged and delivered to the circuit
32 clerk, who shall retain them unopened until they are
33 required for an emergency. Each package of ballots
34 shall be wrapped and sealed in a manner which will
35 immediately make apparent any attempt to open, alter
36 or tamper with the ballots contained therein. Each

37 package of ballots for a precinct shall be clearly
38 labeled, in a manner which cannot be altered, with the
39 county name, the precinct number, and the number of
40 ballots contained therein. If the packaging material
41 conceals the face of the ballot, a sample ballot identical
42 to the official ballots contained therein shall be
43 securely attached to the outside of the package, or, in
44 the case of ballot cards, the type of ballot shall be
45 included in the label.

46 (e) All absentee ballots necessary for the conduct of
47 absentee voting in all voting systems shall be delivered
48 to the circuit clerk of the appropriate county not later
49 than the forty-second day before the election. All
50 official ballots in paper ballot systems shall be deli-
51 vered to the circuit clerk of the appropriate county not
52 later than twenty-eight days before the election.

53 (f) Upon a finding of the board of ballot commission-
54 ers that an official ballot contains an error which in
55 the opinion of the board is of sufficient magnitude as
56 to confuse or mislead the voters, the board shall cause
57 the error to be corrected, either by the reprinting of
58 the ballots or by the use of stickers printed with the
59 correction and of suitable size to be placed over the
60 error without covering any other portion of the ballot.

§3-1-44. Compensation of election officials; expenses.

1 Each ballot commissioner shall be allowed and paid
2 a sum, to be fixed by the county commission, not
3 exceeding fifty dollars for each day he or she shall
4 serve as such, but, in no case shall a ballot commis-
5 sioner receive allowance for more than ten days'
6 services for any one primary, general or special
7 election. Each commissioner of election and poll clerk
8 shall be allowed and paid a sum, to be fixed by the
9 county commission, not exceeding fifty dollars for one
10 day's services for attending the school of instruction
11 for election officials if the commissioner or poll clerk
12 provides at least one day's service during an election
13 and a sum not exceeding one hundred dollars for his
14 or her services at any one election: *Provided*, That
15 each commissioner of election and poll clerk shall be

16 paid and allowed a sum not exceeding one hundred
17 dollars for his or her services at any of the three
18 special elections hereinafter specified and described.
19 The commissioners of election obtaining and deliver-
20 ing the election supplies, as provided in section
21 twenty-four of this article, and returning them as
22 provided in articles five and six of this chapter, shall
23 be allowed and paid an additional sum, likewise fixed
24 by the county commission, not exceeding fifty dollars
25 for all such services at any one election and, in
26 addition, shall be allowed and paid mileage at the rate
27 of twenty-five cents per mile necessarily traveled in
28 the performance of such services. The compensation of
29 election officers, cost of printing ballots, and all other
30 expenses incurred in holding and making the return of
31 elections, other than the three special elections here-
32 inafter specified and described, shall be audited by the
33 county commission and paid out of the county treasury.

34 The compensation of election officers, cost of print-
35 ing ballots, and all other reasonable and necessary
36 expenses in holding and making the return of a special
37 election for the purpose of taking the sense of the
38 voters on the question of calling a constitutional
39 convention, of a special election to elect members of a
40 constitutional convention, and of a special election to
41 ratify or reject the proposals, acts and ordinances of a
42 constitutional convention shall be obligations of the
43 state incurred by the ballot commissioners, clerks of
44 the circuit courts, clerks of the county commissions,
45 and county commissions of the various counties as
46 agents of the state, and all such expenses shall be
47 audited by the secretary of state. The secretary of state
48 shall prepare and transmit to the county commissions
49 forms on which the county commissions shall certify
50 all such expenses of such special elections to the
51 secretary of state. If satisfied that such expenses as
52 certified by the county commissions are reasonable
53 and were necessarily incurred, the secretary of state
54 shall requisition the necessary warrants from the
55 auditor of the state to be drawn on the state treasurer,
56 and shall mail such warrants directly to the vendors of
57 such special election services, supplies and facilities.

ARTICLE 3. VOTING BY ABSENTEES.**§3-3-2b. Special absentee voting list.**

1 Notwithstanding the provisions contained in section
2 twenty-five, article two of this chapter, any person
3 who is registered and otherwise qualified to vote and
4 who is permanently and totally physically disabled and
5 who is unable to vote in person at the polls in an
6 election, may apply to the office of the circuit clerk to
7 have such person's name placed upon a special absen-
8 tee voting list. The special absentee voting list shall be
9 kept by the circuit clerk in a bound book maintained
10 for such purpose.

11 An application shall be prescribed by the secretary
12 of state and shall be in substantially the following
13 form:

14 APPLICATION TO BE PLACED UPON SPECIAL
15 ABSENTEE VOTING LIST

16 Date _____
17 I, _____, hereby declare
18 that I am a permanent resident of the State of West
19 Virginia and of the County of _____,
20 with permanent address as follows:
21 _____,
22 Street City State
23 in the magisterial district of _____,
24 in said County; that I am registered in the precinct of
25 my residence as provided by law.

26 I declare further that I am permanently and totally
27 disabled physically and am unable to vote in person at
28 the polls in an election, and do hereby request that my
29 name be placed upon the special absentee voting list.

30 _____
31 Signature of Applicant
32 (or in case the applicant is
33 illiterate he or she shall make
34 his mark and have it wit-
35 nessed on the following lines):

36

37

Mark of Applicant

38

39

Signature of Witness

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STATEMENT OF PHYSICIAN

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I, _____, hereby declare that I am
a physician, duly licensed to practice in the State of
_____; that I examined
_____ the applicant,
whose signature appears upon the above application
on the _____ day of _____, 19 ____; and that
in my opinion such person is permanently and totally
disabled physically and would be unable to vote in
person at the polls in an election.

50

51

Signature of Physician

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Upon receipt of such application, properly com-
pleted, the circuit clerk shall enter the name of such
person upon the special absentee voting list and the
application shall be filed. The person's name shall
remain on such list (1) until such person requests in
writing that his or her name be removed; or (2) until
such person removes his or her residence from the
county, is purged from the voter registration books or
otherwise becomes ineligible to vote; or (3) a ballot
mailed to the address provided on the application is
returned undeliverable by the United States postal
service; or (4) until the death of such person.

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Each person whose name is contained on the special
absentee voting list may make application for voting
an absent voter's ballot by mail as provided in section
five of this article, but such person shall not be
required to produce a statement of a physician at the
time of such application so long as such person's name
remains on the special absentee voting list.

ARTICLE 4. VOTING MACHINES.**§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.**

1 The ballot commissioners of any county in which

2 voting machines are to be used in any election shall
3 cause to be printed for use in such election the ballot
4 labels for the voting machines and paper ballots for
5 absentee voting, voting by persons unable to use the
6 voting machine and challenged ballots. The labels shall
7 be clearly printed in black ink on clear white material
8 of such size as will fit the ballot frames. The paper
9 ballots shall be printed in compliance with the provi-
10 sions of this chapter governing paper ballots.

11 The heading, the names and arrangement of offices
12 and the printing and arrangement of names of the
13 candidates for each office indicated shall be placed on
14 the ballot for the primary election as nearly as possible
15 according to the provisions of sections thirteen and
16 thirteen-a, article five of this chapter, and for the
17 general election according to the provisions of section
18 two, article six of this chapter: *Provided*, That the
19 staggering of the names of candidates in multi-
20 candidate races and the instructions to straight ticket
21 voters prescribed by section two, article six of this
22 chapter shall appear on paper ballots but shall not
23 appear on ballot labels for voting machines which
24 mechanically control crossover voting.

25 Each question to be voted on shall be placed at the
26 end of the ballot and shall be printed according to the
27 provisions of the laws and regulations governing such
28 question.

29 The ballot labels so printed shall total in number one
30 and one-half times the total number of corresponding
31 voting machines to be used in the several precincts of
32 the county in such election. All such labels shall be
33 delivered to the clerk of the circuit court at least
34 twenty-eight days prior to the day of the election. The
35 clerk of the circuit court shall determine the number
36 of paper ballots needed for absentee voting and to
37 supply the precincts for challenged ballots and ballots
38 to be cast by persons unable to use the voting
39 machine. All such paper ballots shall be delivered to
40 the clerk of the circuit court at least forty-two days
41 prior to the day of the election.

42 When the ballot labels and absentee ballots are
43 delivered, the clerk of the circuit court shall examine
44 them for accuracy, assure that the appropriate ballots
45 and ballot labels are designated for each voting
46 precinct, and deliver the ballot labels to the clerk of
47 the county commission, who shall insert one set in
48 each machine prior to the inspection of the machines
49 as prescribed in section twelve of this article. The
50 remainder of such ballot labels for each machine shall
51 be retained by the clerk of the county commission for
52 use in an emergency.

53 In addition to all other equipment and supplies
54 required by the provisions of this article, the ballot
55 commissioners shall cause to be printed a supply of
56 instruction cards, sample ballots and facsimile dia-
57 grams of the voting machine ballot adequate for the
58 orderly conduct of the election in each precinct in
59 their county. In addition, they shall provide appropri-
60 ate facilities for the reception and safekeeping of the
61 ballots of absent voters and of challenged voters and of
62 such "independent" voters who shall, in primary
63 elections, cast their votes on nonpartisan candidates
64 and public questions submitted to the voters.

**§3-4-11. Ballot label arrangement in machines; drawing by
lot to determine position of candidates on
machines; adjustment; records.**

1 When the ballot labels are printed and delivered to
2 the clerk of the county commission, they shall be
3 placed in the ballot frames of the voting machines in
4 such manner as will most nearly conform to the
5 arrangement prescribed for paper ballots, and as will
6 clearly indicate the party designation or emblem of
7 each candidate. Each column or row containing the
8 names of the office and candidates for such office shall
9 be so arranged as to clearly indicate the office for
10 which the candidate is running. The names of the
11 candidates for each office indicated shall be placed on
12 the ballot.

13 The clerk of the county commission shall cause the
14 voting machines to be programmed so that each lever

15 is properly set to record a vote and that the voter can
16 vote for the maximum number of candidates allowed
17 for each office and no more. In general elections, the
18 straight ticket lever shall cause a vote to be cast for
19 every candidate of the straight ticket party unless the
20 voter cancels a vote within that party by resetting one
21 or more individual levers at the positions of specific
22 candidates to the no-vote position.

23 The clerk shall then see that the counters referred
24 to in subsection eleven of section eight of this article
25 are set at zero (000) and shall lock the operating device
26 and mechanism and devices protecting the counter
27 and ballot labels. The clerk shall then enter in an
28 appropriate book, opposite the number of each pre-
29 cinct, the identifying or distinguishing number of the
30 specific voting machine or machines to be used in that
31 precinct.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11. Ballot labels, instructions and other supplies; procedure and requirements.

1 The ballot commissioners of any county in which an
2 electronic voting system utilizing voting devices for
3 registering the voter's choices is to be used in any
4 election shall cause to be printed for use in such
5 election the ballot cards and ballot labels, as appropri-
6 ate, for the electronic voting system.

7 (a) The ballot labels shall be clearly printed in black
8 ink on clear white material of such size as will fit the
9 vote recording devices. Arrows shall be printed on the
10 ballot labels to indicate the place to punch the ballot
11 card, which may be to the right or left of the name or
12 proposition.

13 (b) The ballot labels shall contain the party emblem
14 and shall clearly indicate the party designation of each
15 candidate. The titles of offices may be arranged on the
16 ballot labels in vertical columns or in a series of
17 separate pages, and shall be printed above or at the
18 side of the names of candidates so as to indicate clearly
19 the candidates for each office and the number to be

20 elected. The names of candidates for each office shall
 21 be printed in vertical columns or on separate pages,
 22 grouped by the offices which they seek.

23 (c) For the primary election, the heading of the
 24 ballot, the type faces, the names and arrangement of
 25 offices and the printing of names and arrangement of
 26 candidates within each office shall conform as nearly
 27 as possible to the provisions of sections thirteen and
 28 thirteen-a, article five of this chapter.

29 (d) For the general election, the heading of the
 30 ballot, the straight ticket positions, the instructions to
 31 straight ticket voters, the type faces, the names and
 32 arrangement of offices and the printing of names and
 33 the arrangement of candidates within each office shall
 34 conform as nearly as possible to the provisions of
 35 section two, article six of this chapter, except as
 36 otherwise provided in this article.

37 The secretary of state shall assign uniform numbers
 38 which shall be used by all counties using electronic
 39 voting for all straight party tickets and for all candi-
 40 dates running for offices to be voted upon by all of the
 41 voters of the state. After taking into account the
 42 numbers so assigned by the secretary of state, the
 43 clerk of the circuit court shall arrange the offices and
 44 the candidates within each office as prescribed by
 45 section two, article six of this chapter, and shall assign
 46 the appropriate number for each candidate.

47 When one candidate is to be elected and only two
 48 parties are on the ballot, the ballot label and the
 49 arrangement of the ballot shall conform as nearly as
 50 practical to the following example:

51 Democratic Ticket	Republican Ticket
52 For Governor 53 (Vote for One)	For Governor (Vote for One)

54 (candidate's name) 10 →
 55 (residence, county)
 56 ← 11 (candidate's name)
 57 (residence, county)

58 When more than two parties are on the ballot for an
 59 office, the arrangement of the ballot shall be specified
 60 by the secretary of state, and may conform to the
 61 following example if practical:

For Governor (Vote for One)			
64	Democrat	(candidate's name)	10 →
65		(residence, county)	
66	Republican	(candidate's name)	11 →
67		(residence, county)	
68	People's	(candidate's name)	12 →
69		(residence, county)	

70 The ballot label and the arrangement of the ballot
 71 for multi-candidate offices shall conform as nearly as
 72 practical to the following example:

Democratic Ticket		Republican Ticket	
74	For House of Delegates	74	For House of Delegates
75	First Delegate District	75	First Delegate District
76	(Vote For Not More	76	(Vote For Not More
77	Than Two)	77	Than Two)
78	[If you marked a straight	78	[If you marked a straight
79	ticket and you mark any	79	ticket and you mark any
80	candidate in a different	80	candidate in a different
81	party for this office, you	81	party for this office, you
82	must mark all your	82	must mark all your
83	choices because your	83	choices because your
84	straight ticket vote	84	straight ticket vote
85	will not be counted for	85	will not be counted for
86	this office.]	86	this office.]

87 (candidate's name) 69 →
 88 (residence, county)

89 ← 70 (candidate's name)
 90 (residence, county)

91 (candidate's name) 71 →
 92 (residence, county)

93 ← 72 (candidate's name)
 94 (residence, county)

95 (e) Any nonpartisan office such as board of educa-
 96 tion and any question to be voted on shall be placed on
 97 a separate page or otherwise separated from the
 98 partisan ballots, which separate page shall constitute a
 99 separate ballot where required.

100 (f) In elections in which voters are authorized to
 101 vote for persons whose names do not appear on the
 102 ballot label, a separate write-in ballot, which may be
 103 in the form of a paper ballot or card or may be part
 104 of the secrecy envelope, shall be provided if required
 105 to permit a voter to enter the title of the office and the
 106 names of persons whose names are not on the ballot,
 107 for whom he or she wishes to vote. The manner of
 108 voting for write-in candidates upon electronic voting
 109 devices shall be as prescribed by rules and regulations
 110 of the secretary of state.

111 (g) In addition to all other equipment and supplies
 112 required by the provisions of this article, the ballot
 113 commissioners shall cause to be printed a supply of
 114 instruction cards, sample ballots, facsimile diagrams of
 115 the vote recording device ballot and official printed
 116 ballots or ballot cards adequate for the orderly conduct
 117 of the election in each precinct in their county. In
 118 addition they shall provide all other materials and
 119 equipment necessary to the conduct of the election,
 120 including voting booths, appropriate facilities for the
 121 reception and safekeeping of ballot cards, the ballots of

122 absent voters and of challenged voters and of such
123 “independent” voters who shall, in primary elections
124 cast their votes on nonpartisan candidates and public
125 questions submitted to the voters.

**§3-4A-12. Ballot label arrangement in vote recording
devices; sealing of devices; record of identifying
numbers.**

1 In counties using electronic voting systems utilizing
2 vote recording devices:

3 (1) The number of ballot labels printed shall equal
4 one and one-half times the total number of corres-
5 ponding vote recording devices to be used in the
6 election. All such labels shall be delivered to the clerk
7 of the county commission at least thirty-five days prior
8 to the election. The circuit clerk shall immediately
9 examine the ballot labels for accuracy and assure that
10 the appropriate ballot labels are designated for each
11 voting precinct.

12 (2) The total number of ballot cards printed and the
13 number packaged for each precinct and the require-
14 ments for ballot colors and packaging shall conform as
15 nearly as possible to the requirements for paper
16 ballots. Official ballot cards printed and packaged for
17 the various precincts shall be delivered to the clerk of
18 the circuit court at least twenty-eight days prior to the
19 election.

20 (3) The necessary number of ballot cards, ballot
21 labels, sample ballots, and other supplies necessary for
22 absentee voting shall be delivered to the clerk of the
23 circuit court at least forty-two days prior to the
24 election. The clerk shall immediately check the ballot
25 labels to assure their accuracy and shall place them in
26 vote recording devices which are clearly designated
27 for the proper district and/or party for the purpose of
28 absentee voting.

29 (4) When the ballot labels are delivered to the clerk
30 of the county commission, the clerk shall place them
31 in the vote recording devices in the proper order. The
32 remainder of such ballot labels for each machine shall

33 be retained by the clerk of the county commission for
34 use in an emergency.

35 (5) The clerk of the county commission shall then
36 seal the vote recording devices so as to prevent
37 tampering with ballot labels, and enter in an appropri-
38 ate book, opposite the number of each precinct, the
39 identifying or distinguishing number of the specific
40 vote recording device or devices to be used in that
41 precinct.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-2. Delegates to national conventions; alternate delegates.

1 (a) At the primary election to be held in the year
2 one thousand nine hundred ninety-two, and in each
3 fourth year thereafter, there shall be elected by the
4 voters of each political party of the state, in accordance
5 with a plan adopted by the state party, persons to be
6 delegates to the national convention of the party to be
7 held next after the date of such primary.

8 (b) The plan adopted by each political party of the
9 state shall state the method, subject to compliance
10 with their national party rules and not inconsistent
11 with the provisions of this chapter, for the election of
12 persons in each congressional district of the state as
13 delegates to the national convention of the party, for
14 the election or selection of persons in each congres-
15 sional district of the state as alternate delegates to the
16 national convention of the party and for the selection
17 of all remaining delegates and alternate delegates
18 allocated to the party in their national convention. Not
19 less than one hundred twenty days before the primary
20 election to be held in the year one thousand nine
21 hundred ninety-two, and in every fourth year there-
22 after, the governing body of each political party of the
23 state shall certify the plan adopted by the party under
24 signature of the state party chairman and file the plan
25 with the secretary of state. Any questions regarding
26 whether such plan was rightfully adopted by the party
27 shall be resolved by the party based upon party rules.

28 (c) The plan adopted by each political party of the
29 state shall, to the extent permissible under their
30 national party rules, provide for the following:

31 (1) The voters of each political party shall elect in
32 each congressional district the number of persons as
33 delegates to the national convention of the party to
34 which the district is entitled.

35 (2) If the rules of the national political party do not
36 require the apportionment of delegates on the basis of
37 their commitment for president, the persons receiving
38 the highest number of votes as delegates in any
39 congressional district to the number to which the
40 district is entitled, shall be elected delegates. After the
41 election of delegates in each congressional district to
42 the number to which the district is entitled, the
43 persons receiving the next highest votes in each
44 congressional district and having qualified, as may be
45 provided in the plan adopted by the party, shall be
46 elected as alternate delegates to the number of alter-
47 nate delegates to which the district is entitled.

48 (3) If the rules of the national political party require
49 that the percentage of votes cast for the various
50 presidential candidates determine the apportionment
51 of committed candidates to be elected as delegates or
52 alternates, regardless of whether such committed
53 candidates received the highest number of votes, then
54 the plan adopted by the political party of the state
55 shall prescribe the number of delegates and alternates
56 to be elected under such apportionment, the method
57 by which the apportionment shall be made, and the
58 method by which the secretary of state shall deter-
59 mine which delegates and alternates are elected. A
60 committed candidate for delegate to national conven-
61 tion is one whose preference for a particular presiden-
62 tial candidate appears on the ballot.

63 (4) In the event the number of persons elected in the
64 primary election in a congressional district is less than
65 the number to which the district is entitled as dele-
66 gates and alternate delegates to the national conven-
67 tion of the political party, the governing body of the

68 political party of the state shall appoint persons from
69 the congressional district to serve as delegates or
70 alternate delegates to the national convention of the
71 party unless the rules of the party otherwise provide.

72 (5) The number of persons which each of the
73 congressional districts in the state are entitled to elect
74 as delegates to the national convention of the political
75 party shall be apportioned among the congressional
76 districts in the same proportion to the total number of
77 delegates to the party's national convention elected in
78 all congressional districts in the state as the population
79 of the congressional district bears to the total popula-
80 tion of the state based upon the census of population
81 taken by the bureau of the census of the United States
82 department of commerce in the year one thousand
83 nine hundred ninety, and in every tenth year
84 thereafter.

85 (d) The official primary ballot at the primary
86 election to be held in the year one thousand nine
87 hundred ninety-two, and in every fourth year there-
88 after, shall, following the names of all candidates for
89 delegates to the national convention of the party,
90 contain the words "For election in accordance with the
91 plan adopted by the party and filed with the secretary
92 of state."

93 (e) Unless and until a political party of the state has
94 adopted and certified a plan for the election of dele-
95 gates to the national convention of the party and filed
96 the plan with the secretary of state, there shall be
97 elected by the voters of the political party of the state
98 at the primary election to be held in the year one
99 thousand nine hundred ninety-two, and in each fourth
100 year thereafter, the number of persons to which the
101 party is entitled as delegates-at-large, and by the
102 voters of each political party in each congressional
103 district in the state the number of delegates to which
104 the district is entitled. The persons receiving the
105 highest number of votes in the state as delegates-at-
106 large, to the number to which the state is entitled,
107 shall be elected delegates. The persons receiving the
108 highest number of votes as delegates in any congres-

109 sional district, to the number to which the district is
110 entitled, shall be elected delegates. Each delegate so
111 elected shall then appoint an individual to serve as
112 alternate delegate, and shall by registered letter notify
113 the secretary of state of such appointment within forty
114 days after the primary election.

§3-5-3. Presidential preference.

1 In presidential election years, in addition to the
2 candidates required to be nominated at the primary
3 election, the qualified voters of each political party
4 shall have the opportunity of voting for their choice
5 among those aspiring to be the candidates of their
6 respective parties for president of the United States.
7 The names of such aspirants shall be printed on the
8 official election ballot of their respective parties, as
9 provided in section thirteen of this article, upon the
10 filing with the secretary of state of the certificate of
11 announcement as provided in section seven of this
12 article and the filing fee or petition in lieu of filing fee
13 as provided in sections eight and eight-a of this article,
14 and the ballot shall be marked and the vote shall be
15 counted, canvassed and returned under the same
16 conditions as to names, certificates and other matters,
17 as the names and certificates of the party aspirants for
18 the party nomination for the office of governor.

§3-5-4. Nomination of candidates in primary elections.

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

11 In primary elections a plurality of the votes cast
12 shall be sufficient for the nomination of candidates for
13 office. Where only one candidate of a political party for
14 any office in a political division, including party

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

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

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

1 Any person who is eligible to hold and seeks to hold
2 an office or political party position to be filled by
3 election in any primary or general election held under
4 the provisions of this chapter shall file a certificate of

5 announcement declaring as a candidate for the nomi-
6 nation or election to such office.

7 (a) The certificate of announcement shall be filed as
8 follows:

9 (1) With the secretary of state, if it be an office or
10 political position to be filled by the voters of more than
11 one county;

12 (2) With the clerk of the circuit court, if it be for an
13 office to be filled by the voters of a single county or
14 of a subdivision less than a county;

15 (3) With the recorder or city clerk if it be for an
16 office to be filled by the voters of a municipality.

17 The certificate of announcement shall be filed with
18 the proper officer not earlier than the second Monday
19 in January next preceding the primary election day,
20 and not later than the first Saturday of February next
21 preceding the primary election day, and must be
22 received before midnight, eastern standard time, of
23 that day or, if mailed, shall be postmarked by the
24 United States postal service before that hour.

25 (b) The certificate of announcement shall be in a
26 form prescribed by the secretary of state on which the
27 candidate shall make a sworn statement before a
28 notary public or other officer authorized to give oaths,
29 containing the following information:

30 (1) The date of the election in which the candidate
31 seeks to appear on the ballot;

32 (2) The name of the office sought; the district, if any;
33 and the division, if any;

34 (3) The legal name of the candidate, and the exact
35 name the candidate desires to appear on the ballot,
36 subject to limitations prescribed in section thirteen,
37 article five of this chapter;

38 (4) The county of residence and a statement that the
39 candidate is a legally qualified voter of that county;
40 and the magisterial district of residence for candidates
41 elected from magisterial districts or under magisterial

42 district limitations;

43 (5) The specific address designating the location at
44 which the candidate resides at the time of filing,
45 including number and street or rural route and box
46 number, and city, state and zip code;

47 (6) For partisan elections, the name of the candi-
48 date's political party, and a statement that the candi-
49 date is a member of and affiliated with that political
50 party as is evidenced by the candidate's current
51 registration as a voter affiliated with that party, and
52 that the candidate has not been registered as a voter
53 affiliated with any other political party for a period of
54 sixty days before the date of filing the announcement;

55 (7) For candidates for delegate to national conven-
56 tion, the name of the presidential candidate to be
57 listed on the ballot as the preference of the candidate
58 on the first convention ballot; or, a statement that the
59 candidate prefers to remain "uncommitted";

60 (8) A statement that the person filing the certificate
61 of announcement is a candidate for the office in good
62 faith;

63 (9) The words "subscribed and sworn to before me
64 this _____ day of _____, 19 _____," and a space for
65 the signature of the officer giving the oath.

66 The secretary of state or the board of ballot commis-
67 sioners, as the case may be, may refuse to certify the
68 candidacy or remove the certification of the candidacy
69 upon receipt of a certified copy of the voter's registra-
70 tion record of the candidate evidencing that the
71 candidate was registered as a voter in a party other
72 than the one named in the certificate of announce-
73 ment during the sixty days immediately preceding the
74 filing of the certificate: *Provided*, That unless a signed
75 formal complaint of violation of this section and the
76 certified copy of the voter's registration record of the
77 candidate be filed with the officer receiving that
78 candidate's certificate of announcement no later than
79 ten days following the close of the filing period, the
80 candidate shall not be refused certification for this
81 reason.

82 (c) The certificate of announcement shall be sub-
83 scribed to and sworn to by the candidate before some
84 officer qualified to administer oaths, who shall certify
85 the same. Any person who knowingly provides false
86 information on said certificate is guilty of false
87 swearing and shall be punished as set forth in section
88 three, article nine of this chapter.

89 (d) Any candidate for delegate to a national conven-
90 tion may change his or her statement of presidential
91 preference by notifying the secretary of state by letter
92 received by the secretary of state no later than the
93 third Tuesday following the close of candidate filing.
94 When the rules of the political party allow each
95 presidential candidate to approve or reject candidates
96 for delegate to convention who may appear on the
97 ballot as committed to that presidential candidate, the
98 presidential candidate or the candidate's committee on
99 his or her behalf may file a list of approved or rejected
100 candidates for delegate, and the secretary of state shall
101 list as "uncommitted" any candidate for delegate who
102 is disapproved by the presidential candidate.

103 (e) No person shall be a candidate for more than one
104 office or office division at any election: *Provided*, That
105 a candidate for an office may also be a candidate for
106 president of the United States, for membership on a
107 political party executive committee or for delegate to
108 a political party national convention. Notwithstanding
109 the provisions of this section, nothing shall prohibit a
110 candidate from jointly running for or jointly holding
111 the offices of county clerk and circuit clerk in those
112 counties which operate a joint clerkship system.

113 (f) Any candidate who files a certificate of
114 announcement for more than one office or division
115 and does not withdraw, as provided by section eleven,
116 article five of this chapter, from all but one office prior
117 to the close of the filing period shall not be certified by
118 the secretary of state or placed on the ballot for any
119 office by the board of ballot commissioners.

120 The provisions of this section shall apply to the
121 primary election held in the year one thousand nine

122 hundred ninety-two, and every primary election held
123 thereafter.

**§3-5-11. Withdrawals; filling vacancies in candidacy;
publication.**

1 (a) A candidate who has filed a certificate of
2 announcement and wishes to withdraw and decline to
3 stand as a candidate for the office shall file a signed
4 and notarized statement of withdrawal with the same
5 officer with whom the certificate of announcement
6 was filed. If such statement of withdrawal is received
7 not later than the third Tuesday following the close of
8 candidate filing, the name of a candidate who files that
9 statement of withdrawal may not be printed on the
10 ballot. No candidate who files a statement of with-
11 drawal after that time may have his or her name
12 removed from the ballot.

13 (b) Upon request of the candidate's family, the board
14 of ballot commissioners may remove the name of a
15 candidate who dies before the ballots are printed. If a
16 candidate dies after the ballots are printed but before
17 the election, the clerk of the circuit court shall give a
18 written notice which shall be posted with the sample
19 ballot at each precinct with the county to the following
20 effect: "To the voter: (name) of (residence), a candi-
21 date for (office) is deceased."

22 (c) If after the time is closed for announcing as a
23 candidate there is a vacancy on the ballot caused by
24 failure of any person of a party to file for each
25 available seat of each available office, the executive
26 committee of the party for the political division within
27 which such candidate was to be voted for, or its chair
28 if the committee fails to act, may fill the vacancy and
29 certify the candidate named to the appropriate filing
30 officer. Certification of the appointment by the exec-
31 utive committee or its chair, the candidate's certificate
32 of announcement, and the filing fee must be received
33 by the appropriate filing officer as follows: For an
34 appointment by an executive committee, no later than
35 the second Friday following the close of filing, for an
36 appointment by its chair, no later than the third

37 Tuesday following the close of filing. A candidate
38 appointed to fill a vacancy on the ballot under this
39 subsection shall have his or her name printed on the
40 primary ballot for that party.

§3-5-13. Form and contents of ballots and ballot labels.

1 The face of every primary election ballot shall
2 conform as nearly as practicable to that used at the
3 general election.

4 (a) The heading of every ballot shall be printed in
5 display type. The heading shall contain a ballot title,
6 the name of the county, the state, the words "Primary
7 Election" and the month, day and year of the election.
8 The ballot title of the political party ballots shall
9 contain the words "Official Ballot of the (Name)
10 Party" and the official symbol of the political party
11 may be included in the heading. The ballot title of any
12 separate paper ballot or portion of any electronic or
13 voting machine ballot for the board of education shall
14 contain the words "Nonpartisan Ballot of Election of
15 Members of the _____ County Board of
16 Education". The districts for which less than two
17 candidates may be elected and the number of available
18 seats shall be specified and the names of the candi-
19 dates shall be printed without reference to political
20 party affiliation, and without designation as to a
21 particular term of office. Any other ballot or portion of
22 a ballot on a question shall have a heading which
23 clearly states the purpose of the election, according to
24 the statutory requirements for that question.

25 (b) (1) For paper ballots, the heading of the ballot
26 shall be separated from the rest of the ballot by heavy
27 lines, and the offices shall be arranged in columns
28 with the following headings, from left to right across
29 the ballot: "National Ticket", "State Ticket", "County
30 Ticket", and, in a presidential election year, "National
31 Convention", or, in a nonpresidential election year
32 "District Ticket". The columns shall be separated by
33 heavy lines. Within the columns, the offices shall be
34 arranged in the order prescribed in section thirteen-a
35 of this article.

36 (2) For voting machines, electronic voting devices,
37 and any ballot tabulated by electronic means, the
38 offices shall appear in the same sequence as prescribed
39 in section thirteen-a, and under the same headings as
40 prescribed in subsection (a) of this section. The
41 number of pages, columns or rows, where applicable,
42 may be modified to meet the limitations of ballot size
43 and composition requirements, subject to approval by
44 the secretary of state.

45 (3) The title of each office shall be separated from
46 preceding offices or candidates by a line, and shall be
47 printed in bold type, no smaller than eight point.
48 Below the office shall be printed the number of the
49 district, if any, the number of the division, if any, and
50 the words "Vote for ____" with the number to be
51 nominated or elected or "Vote For Not More Than
52 ____" in multi-candidate elections. For offices in which
53 there are limitations relating to the number of candi-
54 dates which may be nominated, elected or appointed
55 to or hold office at one time from a political subdivi-
56 sion within the district or county in which they are
57 elected, there shall be a clear explanation of such
58 limitation, as prescribed by the secretary of state,
59 printed in bold type immediately preceding the names
60 of the candidates for those offices on the ballot in
61 every voting system.

62 (c) The location for indicating the voter's choices on
63 the ballot shall be clearly shown. For paper ballots,
64 other than those tabulated electronically, the official
65 primary ballot shall contain a square formed in dark
66 lines at the left of each name on the ballot, arranged
67 in a perpendicular column of squares before each
68 column of names.

69 (d) (1) The name of every candidate certified by the
70 secretary of state or the board of ballot commissioners
71 shall be printed in capital letters in no smaller than
72 eight point type on the ballot for the appropriate
73 precincts. Subject to the rules promulgated by the
74 secretary of state, the name of each candidate shall
75 appear in the form set out by the candidate on the
76 certificate of announcement, but in no case shall the

77 name misrepresent the identity of the candidate, nor
78 shall the name include any title, position, rank, degree
79 or nickname implying or inferring any status as a
80 member of a class or group or affiliation with any
81 system of belief.

82 (2) The city of residence of every candidate, the state
83 of residence of every candidate residing outside the
84 state, the county of residence of every candidate for an
85 office on the ballot in more than one county, and the
86 magisterial district of residence of every candidate for
87 an office subject to magisterial district limitations,
88 shall be printed in lower case letters beneath the
89 names of the candidates.

90 (3) The arrangement of names within each office
91 shall be determined as prescribed in section thirteen-
92 a of this article.

93 (4) If the number of candidates for an office exceeds
94 the space available on a column or ballot label page
95 and requires that candidates for a single office be
96 separated, to the extent possible, the number of
97 candidates for the office on separate columns or pages
98 shall be nearly equal, and clear instructions given the
99 voter that the candidates for the office are continued
100 on the following column or page.

101 (e) When an insufficient number of candidates has
102 filed for a party to make the number of nominations
103 allowed for the office, or for the voters to elect
104 sufficient members to the board of education or to
105 executive committees, the vacant positions on the
106 ballot shall be filled with the words "No Candidate
107 Filed": *Provided*, That in paper ballot systems which
108 allow for write-ins to be made directly on the ballot,
109 a blank line shall be placed in any vacant position in
110 the office of board of education or for election to any
111 party executive committee. A line shall separate each
112 candidate from every other candidate for the same
113 office.

114 (f) In presidential election years, the words "For
115 election in accordance with the plan adopted by the
116 party and filed with the secretary of state" shall be

117 printed following the names of all candidates for
118 delegate to national convention.

119 (g) All paper ballots shall be printed in black ink on
120 paper sufficiently thick so that the printing or marking
121 cannot be discernible from the back. Ballot cards and
122 paper for printing ballots using electronically sensible
123 ink shall meet minimum requirements of the tabulat-
124 ing systems.

125 (h) Electronically tabulated ballots and ballot cards
126 shall contain perforated tabs at the top of the ballots
127 and shall be printed with unique sequential numbers
128 from one to the highest number representing the total
129 number of ballots or ballot cards printed. On paper
130 ballots, the ballot shall be bordered by a solid line at
131 least one sixteenth of an inch wide, and the ballot shall
132 be trimmed to within one-half inch of that border.

133 (i) On the back of every official ballot or ballot card,
134 there shall be printed the words "Official Ballot" with
135 the name of the county and the date of the election.
136 Beneath shall be two blank lines, followed by the
137 words "Poll Clerks".

138 (j) Absent voters' ballots shall be in all respects like
139 other official ballots, except that three blank lines shall
140 be printed on the back of the ballot or ballot card in
141 the lower left corner with the words "Ballot Commis-
142 sioners" printed underneath.

143 (k) The face of sample paper ballots and sample
144 ballot labels shall be like other official ballots or ballot
145 labels, except that the word "sample" shall be prom-
146 inently printed across the front of the ballot in such a
147 way that the names of candidates are not obscured,
148 and the word "sample" may be printed in red ink. No
149 printing shall be placed on the back of the sample.

**§3-5-13a. Order of offices and candidates on the ballot;
uniform drawing date.**

1 (a) The order of offices for state and county elections
2 on all ballots within the state shall be as prescribed
3 herein. When the office does not appear on the ballot
4 in an election, then it shall be omitted from the

5 sequence. When an unexpired term for an office
6 appears on the ballot along with a full term, the
7 unexpired term shall appear immediately below the
8 full term.

9 NATIONAL TICKET: President (and vice president in
10 the general election), United States senator, member
11 of the United States house of representatives

12 STATE TICKET: Governor, secretary of state, auditor,
13 treasurer, commissioner of agriculture, attorney
14 general, justice of the supreme court of appeals, state
15 senator, member of the house of delegates, circuit
16 judge in multi-county districts, any other multi-county
17 office, state executive committee

18 COUNTY TICKET: Circuit judge in single-county
19 districts, clerk of the circuit court, county commis-
20 sioner, clerk of the county commission, prosecuting
21 attorney, sheriff, assessor, magistrate, surveyor, con-
22 gressional district executive committee, senatorial
23 district executive committee in multi-county districts,
24 delegate district executive committee in multi-county
25 districts

26 NATIONAL CONVENTION: Delegate to the national
27 convention — at-large, delegate to the national con-
28 vention — congressional district

29 DISTRICT TICKET: County executive committee.

30 (b) Except for office divisions in which no more than
31 one person has filed a certificate of announcement, the
32 arrangement of names for all offices shall be deter-
33 mined by lot according to the following provisions:

34 (1) On the fourth Tuesday following the close of the
35 candidate filing, beginning at nine o'clock a.m., a
36 drawing by lot shall be conducted in the office of the
37 clerk of the circuit court in each county. Notice of the
38 drawing shall be given on the form for the certificate
39 of announcement, and no further notice shall be
40 required. The clerk of the circuit court shall superin-
41 tend and conduct the drawing, and the method of
42 conducting the drawing shall be prescribed by the
43 secretary of state.

44 (2) Except as provided herein, the position of each
45 candidate within each office division shall be deter-
46 mined by the position drawn for that candidate
47 individually: *Provided*, That if fewer candidates file
48 for an office division than the total number to be
49 nominated or elected, the vacant positions shall appear
50 following the names of all candidates for the office.

51 (3) Candidates for delegate to national convention
52 who have filed a commitment to a candidate for
53 president shall be listed alphabetically within the
54 group of candidates committed to the same candidate
55 for president and uncommitted candidates shall be
56 listed alphabetically in an uncommitted category. The
57 position of each group of committed candidates and
58 uncommitted candidates shall be determined by lot by
59 drawing the names of the presidential candidates and
60 for an uncommitted category.

61 (4) A candidate or the candidate's representative
62 may attend the drawings.

§3-5-19. Vacancies in nominations; how filled; fees.

1 (a) If any vacancy shall occur in the party nomina-
2 tion of candidates for office nominated at the primary
3 election or by appointment under the provisions of
4 section eleven of this article, the vacancies may be
5 filled, subject to the following requirements and
6 limitations:

7 (1) Each appointment made under this section shall
8 be made by the executive committee of the political
9 party for the political division in which the vacancy
10 occurs: *Provided*, That if the executive committee fails
11 to make an appointment in a duly called meeting or
12 fails to certify the appointment of the candidate to the
13 proper filing officer within the time required, the
14 chairperson of the executive committee may make the
15 appointment not later than two days following the
16 deadline for the executive committee.

17 (2) Each appointment made under this section is
18 complete only upon the receipt by the proper filing
19 officer of the certificate of appointment by the execu-

20 tive committee, or its chairperson, as the case may be,
21 the certificate of announcement of the candidate as
22 prescribed in section seven of this article, and, except
23 for appointments made under subdivision (4), (5) or (6)
24 of this subsection, the filing fee or waiver of fee as
25 prescribed in section eight or eight-a of this article.
26 The proper filing officer is the officer with whom the
27 original certificate of nomination is regularly filed for
28 that office.

29 (3) If a vacancy in nomination is caused by the
30 failure of a candidate to file for an office, or by
31 withdrawal of a candidate no later than the third
32 Tuesday following the close of candidate filing pursu-
33 ant to the provisions of section eleven of this article,
34 a nominee may be appointed by the executive commit-
35 tee and certified to the proper filing officer no later
36 than the Thursday preceding the primary election.

37 (4) If a vacancy in nomination is caused by the
38 disqualification or incapacity of the candidate, and if
39 the vacancy occurs not later than eighty-four days
40 before the general election, a nominee may be
41 appointed by the executive committee and certified to
42 the proper filing officer no later than seventy-eight
43 days before the general election.

44 (5) If a vacancy in nomination is caused by the
45 withdrawal of the candidate no later than ninety-eight
46 days before the general election due to extenuating
47 personal circumstances which will prevent the candi-
48 date from serving in the office if elected, and if the
49 candidate or the chairperson of the executive commit-
50 tee for the political division applies in writing to the
51 state election commission no later than ninety-five
52 days before the general election for permission to fill
53 the vacancy, the state election commission shall
54 review the reasons for the withdrawal. If the commis-
55 sion finds the circumstances warrant the withdrawal
56 of the candidate, the commission may authorize
57 appointment by the executive committee to fill the
58 vacancy, upon which authorization a nominee may be
59 appointed by the executive committee and certified to
60 the proper filing officer no later than seventy-eight

61 days before the general election.

62 (6) If a vacancy in nomination is caused by the death
63 of the candidate occurring no later than twenty-five
64 days before the general election, a nominee may be
65 appointed by the executive committee and certified to
66 the proper filing officer no later than twenty-one days
67 following the date of such death, or no later than
68 twenty-two days before the general election, which-
69 ever date occurs first.

70 (b) Except as otherwise provided in article ten of
71 this chapter, if any vacancy occurs in a partisan office
72 or position other than political party executive com-
73 mittee, which vacancy creates an unexpired term for
74 a position which would not otherwise appear on the
75 ballot in the general election, and the vacancy occurs
76 after the close of candidate filing for the primary
77 election but not later than eighty-four days before the
78 general election, a nominee of each political party may
79 be appointed by the executive committee and certified
80 to the proper filing officer no later than seventy-eight
81 days before the general election. Appointments shall
82 be filed in the same manner as provided in subsection
83 (a) of this section, except that the filing fee shall be
84 paid before the appointment is complete.

85 (c) When a vacancy occurs in the board of education
86 after the close of candidate filing for the primary
87 election but not later than eighty-four days before the
88 general election, a special candidate filing period shall
89 be established. Candidates seeking election to any
90 unexpired term for board of education shall file a
91 certificate of announcement and pay the filing fee to
92 the clerk of the circuit court no earlier than the first
93 Monday in August and no later than seventy-seven
94 days before the general election.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

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

1 (a) All ballots prepared under the provisions of this
2 section shall contain:

3 (1) The name and ticket of each party which is a

4 political party under the provisions of section eight,
5 article one of this chapter;

6 (2) The name chosen as the party name by each
7 group of citizens which has secured nomination for
8 two or more candidates by petition under the provi-
9 sions of section twenty-three of this article;

10 (3) The names of every candidate for any office to be
11 voted for at the election whose nomination in the
12 primary election, nomination by petition or nomina-
13 tion by appointment to fill a vacancy on the ballot has
14 been certified and filed according to law, and no
15 others.

16 (b) The provisions of subsections (b)(3), (c), (d)(1),
17 (d)(2), (g), (h), (i), (j) and (k) of section thirteen of
18 article five pertaining to the preparation and form of
19 primary election ballots shall likewise apply to general
20 election ballots.

21 (c) (1) For all ballot systems, the ballot heading shall
22 be in display type and shall contain the words, "Offi-
23 cial Ballot, General Election" and the name of the
24 county and the month, day and year of the election.

25 (2) After the heading, each ballot shall contain, laid
26 out in parallel columns, rows or pages as required by
27 the particular voting system, the party emblem, the
28 position for straight party voting for each party and
29 the name of each party as prescribed in subsection (a)
30 of this section. On paper ballots, the position for
31 straight party voting shall be a heavy circle, three-
32 fourths inch in diameter, surrounded by the words
33 "For a straight ticket mark within this circle" printed
34 in bold six point type. On all other ballots or ballot
35 labels, the positions for straight party voting shall be
36 marked "Straight Party Ticket". For ballots tabulated
37 electronically, the secretary of state shall prescribe a
38 uniform number for the straight ticket position for
39 each party.

40 (3) The party whose candidate for president received
41 the highest number of votes at the last preceding
42 presidential election shall be placed in the left, or first

43 column, row or page, as is appropriate to the voting
44 system. The party which received the second highest
45 vote shall be next, and so on. Any groups or third
46 parties which did not have a candidate for president
47 on the ballot in the previous presidential election shall
48 be placed in the sequence in which the final certifi-
49 cates of nomination by petition were filed.

50 (4) (A) Except for lever machine ballot labels, the
51 following general instructions for straight party voters
52 shall be printed in no smaller than eight point bold
53 type: "IF YOU MARKED A STRAIGHT TICKET:
54 When you mark any individual candidate in a differ-
55 ent party, that vote will override your straight party
56 vote for that office. When you mark any individual
57 candidate in a different party for an office where more
58 than one will be elected, YOU MUST MARK EACH
59 OF YOUR CHOICES FOR THAT OFFICE because
60 your straight ticket vote will not be counted for that
61 office." The last sentence of the above instructions
62 shall not be included on any ballot which does not
63 contain any office or division where more than one
64 candidate will be elected.

65 On paper ballots, the general instructions shall be
66 placed below the party name and across the top of all
67 columns, followed by a heavy line separating them
68 from the rest of the ballot. On ballots marked with
69 electronically sensible ink and on ballot labels for
70 voting devices in punch card systems, the general
71 instructions shall be placed after the position for
72 straight voting and before any office.

73 (B) Except for lever machine ballot labels, the
74 following specific instructions shall be printed on the
75 ballot for any partisan election for an office or division
76 to which more than one candidate is to be elected: "If
77 you marked a straight ticket and you mark any
78 candidate in a different party for this office, you must
79 mark all your choices for this office because your
80 straight ticket vote will not be counted for this office."

81 On paper ballots, the specific instructions shall be
82 placed below the office name of any partisan office

83 where more than one is to be elected, and across the
84 top of all columns for that office before the names of
85 any candidates. On all other ballots and ballot labels,
86 the specific instructions shall be placed above or to the
87 side of the names of the candidates, as the voting
88 system requires.

89 (5) For all ballots, any columns, rows or sections in
90 which the ticket of one party appears shall be clearly
91 separated from the other columns, rows or sections by
92 a heavy line or other clear division. For each party,
93 the offices shall be arranged in the order prescribed in
94 section thirteen-a, article five of this chapter, under
95 the appropriate tickets, which shall be headed
96 "National Ticket", "State Ticket" and "County
97 Ticket". The number of pages, columns or rows,
98 where applicable, may be modified to meet the limita-
99 tions of ballot size and composition requirements,
100 subject to approval by the secretary of state.

101 (d) The arrangement of names within each office for
102 all ballot systems shall be as follows:

103 (1) In elections for presidential electors, the names
104 of the candidates for president and vice president of
105 each party shall be placed beside a brace with a single
106 voting position, so that a vote for any presidential
107 candidate shall be a vote for the electors of the party
108 for which such candidates were named.

109 (2) The order of names of candidates for any office
110 or division for which more than one is to be elected
111 shall be determined as prescribed in section thirteen-
112 a, article five of this chapter: *Provided*, That the
113 drawing by lot shall be conducted on the seventieth
114 day next preceding the date of the general election,
115 beginning at nine o'clock a.m.

116 (3) Except in voting machine systems, in any office
117 where more than one person is to be elected, the
118 names of the candidates for the office shall be stag-
119 gered so that no two candidates for that office shall
120 appear directly opposite any other candidate, as shown
121 in the example below:

122	For House of Delegates	For House of Delegates
123	First Delegate District	First Delegate District

124	(Vote For Not More	(Vote For Not More
125	Than Two)	Than Two)

126 [If you marked a straight ticket and you mark any
 127 candidate in a different party for this office, you must
 128 mark all your choices for this office because your
 129 straight ticket vote will not be counted for this office.]

130	SUSAN B. ANTHONY
131	City (County)

132		JOHN ADAMS
133		City (County)

134	ABRAHAM LINCOLN
135	City (County)

136		JAMES MONROE
137		City (County)

138 (4) Each voting system shall provide a means for
 139 voters to vote for any person whose name does not
 140 appear on the ticket by writing it with pen or pencil
 141 or by using stamps, stickers, tapes, labels or other
 142 means of writing in the name of a candidate which
 143 does not interfere with the tabulation of the ballot.

144 (A) In paper ballot systems which allow for write-ins
 145 to be made directly on the ballot, a blank square and
 146 a blank line equal to the space which would be
 147 occupied by the name of the candidate shall be placed
 148 under the proper office for each vacancy in nomina-
 149 tion, and for an office for which more than one is to
 150 be elected, any such vacancy shall appear after any
 151 other candidates for the office.

152 (B) In machine and electronically tabulated ballot
153 systems in which write-in votes must be made in a
154 place other than on the ballot label, if there is a
155 vacancy in nomination leaving fewer candidates in
156 any party than can be elected to that office, the words
157 "No Candidate Nominated" shall be printed in the
158 space that would be occupied by the name of the
159 candidate, and for an office for which more than one
160 is to be elected, any such vacancy shall appear after
161 any other candidates for the office.

162 (5) In a general election in any county in which
163 unexpired terms of the board of education are to be
164 filled by election, a separate section or page of the
165 ballot shall be set off by means clearly separating the
166 nonpartisan ballot from the ballot for the political
167 party candidates, and shall be headed "Nonpartisan
168 Board of Education".

169 (e) Any constitutional amendment shall be placed
170 following all offices, followed by any other issue upon
171 which the voters shall cast a vote. The heading for
172 each amendment or issue shall be printed in large,
173 bold type according to the requirements of the resolu-
174 tion authorizing such election.

175 (f) The board of ballot commissioners may not place
176 any issue on the ballot for election which is not
177 specifically authorized under the West Virginia consti-
178 tution or statutes, or which has not been properly
179 ordered by the appropriate governmental body
180 charged with calling such election.

ARTICLE 10. FILLING VACANCIES.

§3-10-1. Elections to fill vacancies.

1 Except as provided in sections three and four of this
2 article, elections to fill vacancies shall be conducted to
3 fill any unexpired term when more than one year of
4 the term of office remains at the time of such election.
5 When less than one year of the term of office remains
6 at the time of the election, the person appointed to fill
7 the vacancy shall continue in office until the comple-
8 tion of the term. Elections to fill vacancies shall be

9 held at the same places, and superintended, conducted
10 and returned, and the result ascertained, certified and
11 declared, in the same manner, and by the same
12 officers, as in general elections. The persons elected,
13 having first duly qualified, shall enter upon the duties
14 of their respective offices.

§3-10-6. Vacancy in office of circuit court clerk.

1 When a vacancy occurs in the office of clerk of the
2 circuit court, the circuit court by a majority vote of
3 the judges, or the chief judge thereof in vacation, shall
4 fill the same by appointment of a person of the same
5 political party as the officeholder vacating the office
6 until the next general election, or until the completion
7 of the term if the term ends on the thirty-first day of
8 December following the next general election and the
9 person so appointed shall hold office until his or her
10 successor is elected and qualified. At such general
11 election a clerk shall be elected for the unexpired term
12 if the unexpired term is greater than one year. The
13 circuit court, or the chief judge thereof in vacation,
14 shall cause a notice of such election to be published
15 prior to such election as a Class II-O legal advertise-
16 ment in compliance with the provisions of article
17 three, chapter fifty-nine of this code, and the publica-
18 tion area for such publication shall be the county. If
19 the vacancy occurs no later than the eighty-fourth day
20 before the primary election held to nominate candi-
21 dates to be voted for at the general election, at which
22 any such vacancy is to be filled, candidates to fill such
23 vacancy shall be nominated at such primary election
24 in accordance with the time requirements and the
25 provisions and procedures prescribed in section
26 eleven, article five of this chapter. If the vacancy
27 occurs after the eighty-fourth day before the primary
28 but not later than the eighty-fourth day before the
29 general election, they shall be nominated by the
30 county executive committee in the manner provided
31 in section nineteen, article five, of this chapter, as in
32 the case of filling vacancies in nominations, and the
33 names of the persons, so nominated and certified to
34 the clerk of the circuit court of such county, shall be

35 placed upon the ballot to be voted at such next general
36 election.

**§3-10-7. Vacancies in offices of county commissioner and
clerk of county commission.**

1 Any vacancy in the office of county commissioner or
2 clerk of county commission shall be filled by the
3 county commission of the county, unless the number
4 of vacancies in a county commission deprive that body
5 of a quorum, in which case the governor of the state
6 shall fill any vacancy in such county commission
7 necessary to create a quorum thereof. Persons
8 appointed shall be of the same political party as the
9 officeholder vacating the office and shall continue in
10 office until the next general election is certified, or
11 until the completion of the term if the term ends on
12 the thirty-first day of December following the next
13 general election. The vacancy shall be filled by
14 election for the unexpired term if the unexpired term
15 is greater than one year: *Provided*, That in the event
16 a quorum of the county commission cannot agree upon
17 a person to fill a vacancy in the office of county
18 commissioner it shall be the mandatory, nondiscre-
19 tionary duty of each such county commissioner, within
20 sixty days from the date such vacancy occurs, to
21 submit in person to the chief judge of the circuit court
22 of such county, the name of one person who is a
23 member of the same political party as was the person
24 whose vacancy is being filled and was such a member
25 for at least one year next preceding the filling of such
26 vacancy and who is legally qualified and willing to fill
27 such vacancy. The judge shall thereupon, in the
28 presence of the quorum of the county commission,
29 cause each name to be written on a separate piece of
30 paper, shall fold or roll up the pieces of paper so as to
31 resemble each other and so that the name written
32 thereon shall not be visible on the outside, and shall
33 deposit the pieces of paper in a box from which one of
34 the county commissioners, selected by lot under the
35 supervision of such judge, shall, in the presence of
36 each other and the judge, draw one of the names and
37 the person whose name is so drawn shall be the
38 county commission's choice to fill such vacancy. The

39 circuit court shall have jurisdiction to compel com-
40 pliance with the provisions of this proviso.

41 Notice of such election as aforesaid shall be given by
42 order of the county commission and published as
43 prescribed in section six of this article. Nomination of
44 candidates to fill the office for an unexpired term in
45 the office of county commission or clerk of the county
46 commission shall be made in the manner prescribed
47 for making nominations to fill a vacancy in the office
48 of the clerk of the circuit court.

**§3-10-8. Vacancies in offices of prosecuting attorney, sheriff,
assessor and surveyor.**

1 Any vacancy occurring in the office of prosecuting
2 attorney, sheriff, assessor or county surveyor shall be
3 filled by the county commission by appointment of a
4 person of the same political party as the officeholder
5 vacating the office, and the appointed person shall
6 hold the office until the next general election is
7 certified, or until the completion of the term if the
8 term ends on the thirty-first day of December follow-
9 ing the next general election. Such vacancy shall be
10 filled by election for the unexpired term if the
11 unexpired term is greater than one year. Notice of an
12 election to fill a vacancy in any of the offices named
13 in this section shall be given by the county commis-
14 sion, or by the president thereof in vacation, and
15 published or posted in the manner prescribed in
16 section six of this article. Nomination of candidates to
17 fill any such vacancy shall be made in the manner
18 prescribed in said section six of this article for nomi-
19 nating candidates to fill a vacancy in the office of the
20 clerk of the circuit court.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-2. Filling vacancies.

1 (a) The board shall, by appointment, fill within
2 forty-five days any vacancy that occurs in its member-
3 ship. In the event that the board does not fill the
4 vacancy within forty-five days, the state superinten-

5 dent of schools shall appoint a person to fill the
6 vacancy:

7 (b) (1) When the vacancy occurs after the eighty-
8 fourth day before a general election, and the affected
9 term of office ends on the thirtieth day of June
10 following the next primary election, the person
11 appointed to fill the vacancy shall continue in office
12 until the completion of the term.

13 (2) When the vacancy occurs after the eighty-fourth
14 day before a general election and not later than the
15 close of candidate filing for the next succeeding
16 primary election, and the affected term of office does
17 not end on the thirtieth day of June following the next
18 primary election, an election for the unexpired term
19 shall be held at the next primary election, and the
20 appointment shall continue until a successor is elected
21 and certified.

22 (3) When the vacancy occurs after the close of
23 candidate filing for the primary election and not later
24 than eighty-four days before the general election, the
25 vacancy shall be filled by election in the general
26 election, and the appointment shall continue until a
27 successor is elected and certified.

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

Flomer Luck
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Parrell E. Ellis
.....
Clerk of the Senate

Donald G. Koop
.....
Clerk of the House of Delegates

Kirk Samtette
.....
President of the Senate

W. R. Cullen
.....
Speaker House of Delegates

The within ~~is approved~~ this the 22.....
day of April....., 1991.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/91

Time 10:50 am