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.

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

At such primary election, the voters of each political party in each county shall elect one male and one female member of the party's executive committee of the congressional district, of the senatorial district and of the delegate district in which such county is situated, if such county be situated in a multi-county senatorial or delegate district. When districts are realigned following a decennial census, members of an executive committee previously elected in a county to represent that county to a congressional or multi-county senatorial or delegate district executive committee shall continue to represent that county in the appropriate newly constituted multi-county district until the expiration of their terms: Provided, That the
county executive committee of the political party shall
determine which previously elected members shall
represent the county if the number of multi-county
senatorial or delegate districts in the county is
decreased; and shall appoint members to complete the
remainder of the term if the number of such districts
is increased.

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

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

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

All members of executive committees, selected for
each political division as herein provided, shall reside
within the county or district from which chosen. The
term of office of all members of executive committees
elected at the primary election in the year one
thousand nine hundred ninety-four, shall begin on the
first day of July, following said primary, and shall
continue for four years thereafter and until their
successors are elected and qualified. Vacancies in the
state executive committee shall be filled by the
members of the committee for the unexpired term.
Vacancies in the party's executive committee of a
congressional district, senatorial district, delegate
district or county shall be filled by the party's execu-
tive committee of the county in which such vacancy
exists, and shall be for the unexpired term.

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

Any meeting of any political party executive com-
mittee shall be held only after public notice and notice
to each member is given according to party rules and
shall be open to all members affiliated with such
party. Meetings shall be conducted according to party
rules, all official actions shall be made by voice vote,
and minutes shall be maintained and shall be open to
inspection by members affiliated with such party.
§3-1-21. Printing of official and sample ballots; number; packaging and delivery, correction of ballots.

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

(b) The persons who shall provide the ballots necessary for the conduct of all other elections shall be:

1. The secretary of state, for any statewide special election ordered by the Legislature;
2. The board of ballot commissioners, for any county-wide special election ordered by the county commission; or
3. The board of education, for any special levy or bond election ordered by the board of education; or
4. The municipal board of ballot commissioners, for any election conducted for or within a municipality, except an election in which the matter affecting the municipality is placed on the county ballot at a county election. Ballots other than those caused to be printed by the proper authorities as specified in this section shall not be cast, received, or counted in any election.

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

(d) The number of regular official ballots packaged for each precinct shall equal the number of registered voters of the precinct. The remaining regular official ballots shall be packaged and delivered to the circuit clerk, who shall retain them unopened until they are required for an emergency. Each package of ballots shall be wrapped and sealed in a manner which will immediately make apparent any attempt to open, alter or tamper with the ballots contained therein. Each
package of ballots for a precinct shall be clearly labeled, in a manner which cannot be altered, with the county name, the precinct number, and the number of ballots contained therein. If the packaging material conceals the face of the ballot, a sample ballot identical to the official ballots contained therein shall be securely attached to the outside of the package, or, in the case of ballot cards, the type of ballot shall be included in the label.

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

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

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

Each ballot commissioner shall be allowed and paid a sum, to be fixed by the county commission, not exceeding fifty dollars for each day he or she shall serve as such; but, in no case shall a ballot commissioner receive allowance for more than ten days’ services for any one primary, general or special election. Each commissioner of election and poll clerk shall be allowed and paid a sum, to be fixed by the county commission, not exceeding fifty dollars for one day’s services for attending the school of instruction for election officials if the commissioner or poll clerk provides at least one day’s service during an election and a sum not exceeding one hundred dollars for his or her services at any one election: Provided, That each commissioner of election and poll clerk shall be
paid and allowed a sum not exceeding one hundred dollars for his or her services at any of the three special elections hereinafter specified and described. The commissioners of election obtaining and delivering the election supplies, as provided in section twenty-four of this article, and returning them as provided in articles five and six of this chapter, shall be allowed and paid an additional sum, likewise fixed by the county commission, not exceeding fifty dollars for all such services at any one election and, in addition, shall be allowed and paid mileage at the rate of twenty-five cents per mile necessarily traveled in the performance of such services. The compensation of election officers, cost of printing ballots, and all other expenses incurred in holding and making the return of elections, other than the three special elections hereinafter specified and described, shall be audited by the county commission and paid out of the county treasury.

The compensation of election officers, cost of printing ballots, and all other reasonable and necessary expenses in holding and making the return of a special election for the purpose of taking the sense of the voters on the question of calling a constitutional convention, of a special election to elect members of a constitutional convention, and of a special election to ratify or reject the proposals, acts and ordinances of a constitutional convention shall be obligations of the state incurred by the ballot commissioners, clerks of the circuit courts, clerks of the county commissions, and county commissions of the various counties as agents of the state, and all such expenses shall be audited by the secretary of state. The secretary of state shall prepare and transmit to the county commissions forms on which the county commissions shall certify all such expenses of such special elections to the secretary of state. If satisfied that such expenses as certified by the county commissions are reasonable and were necessarily incurred, the secretary of state shall requisition the necessary warrants from the auditor of the state to be drawn on the state treasurer, and shall mail such warrants directly to the vendors of 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 twenty-five, article two of this chapter, any person who is registered and otherwise qualified to vote and who is permanently and totally physically disabled and who is unable to vote in person at the polls in an election, may apply to the office of the circuit clerk to have such person’s name placed upon a special absentee voting list. The special absentee voting list shall be kept by the circuit clerk in a bound book maintained for such purpose.

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

APPLICATION TO BE PLACED UPON SPECIAL ABSENTEE VOTING LIST

Date __________________________

I, ____________________________, hereby declare that I am a permanent resident of the State of West Virginia and of the County of ________________, with permanent address as follows:

______________________________ Street

______________________________ City ________________________ State

in the magisterial district of ________________, in said County; that I am registered in the precinct of my residence as provided by law.

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

______________________________ Signature of Applicant

(or in case the applicant is illiterate he or she shall make his mark and have it witnessed on the following lines):
STATEMENT OF PHYSICIAN

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.

Signature of Physician

Upon receipt of such application, properly completed, 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.

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
voting machines are to be used in any election shall cause to be printed for use in such election the ballot labels for the voting machines and paper ballots for absentee voting, voting by persons unable to use the voting machine and challenged ballots. The labels shall be clearly printed in black ink on clear white material of such size as will fit the ballot frames. The paper ballots shall be printed in compliance with the provisions of this chapter governing paper ballots.

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

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

The ballot labels so printed shall total in number one and one-half times the total number of corresponding voting machines to be used in the several precincts of the county in such election. All such labels shall be delivered to the clerk of the circuit court at least twenty-eight days prior to the day of the election. The clerk of the circuit court shall determine the number of paper ballots needed for absentee voting and to supply the precincts for challenged ballots and ballots to be cast by persons unable to use the voting machine. All such paper ballots shall be delivered to the clerk of the circuit court at least forty-two days prior to the day of the election.
When the ballot labels and absentee ballots are delivered, the clerk of the circuit court shall examine them for accuracy, assure that the appropriate ballots and ballot labels are designated for each voting precinct, and deliver the ballot labels to the clerk of the county commission, who shall insert one set in each machine prior to the inspection of the machines as prescribed in section twelve of this article. The remainder of such ballot labels for each machine shall be retained by the clerk of the county commission for use in an emergency.

In addition to all other equipment and supplies required by the provisions of this article, the ballot commissioners shall cause to be printed a supply of instruction cards, sample ballots and facsimile diagrams of the voting machine ballot adequate for the orderly conduct of the election in each precinct in their county. In addition, they shall provide appropriate facilities for the reception and safekeeping of the ballots of absent voters and of challenged voters and of such “independent” voters who shall, in primary elections, cast their votes on nonpartisan candidates 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.

When the ballot labels are printed and delivered to the clerk of the county commission, they shall be placed in the ballot frames of the voting machines 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 or row 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.

The clerk of the county commission shall cause the voting machines to be programmed so that each lever
is properly set to record a vote and that the voter can vote for the maximum number of candidates allowed for each office and no more. In general elections, the straight ticket lever shall cause a vote to be cast for every candidate of the straight ticket party unless the voter cancels a vote within that party by resetting one or more individual levers at the positions of specific candidates to the no-vote position.

The clerk shall then see that the counters referred to in subsection eleven of section eight of this article are set at zero (000) and shall lock the operating device and mechanism and devices protecting the counter and ballot labels. The clerk shall then enter in an appropriate book, opposite the number of each precinct, the identifying or distinguishing number of the specific voting machine or machines to be used in that 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 electronic voting system utilizing voting devices for registering the voter’s choices is to be used in any election shall cause to be printed for use in such election the ballot cards and ballot labels, as appropriate, for the electronic voting system.

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

(b) The ballot labels shall contain the party emblem and shall clearly indicate the party designation of each candidate. The titles of offices may be arranged on the ballot labels in vertical columns or in a series of separate pages, and shall be printed above or at the side of the names of candidates so as to indicate clearly the candidates for each office and the number to be
elected. The names of candidates for each office shall be printed in vertical columns or on separate pages, grouped by the offices which they seek.

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

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

The secretary of state shall assign uniform numbers which shall be used by 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. After taking into account the numbers so assigned by the secretary of state, the clerk of the circuit court shall arrange the offices and the candidates within each office as prescribed by section two, article six of this chapter, and shall assign the appropriate number for each candidate.

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

<table>
<thead>
<tr>
<th>Democratic Ticket</th>
<th>Republican Ticket</th>
</tr>
</thead>
<tbody>
<tr>
<td>For Governor</td>
<td>For Governor</td>
</tr>
<tr>
<td>(Vote for One)</td>
<td>(Vote for One)</td>
</tr>
</tbody>
</table>
When more than two parties are on the ballot for an office, the arrangement of the ballot shall be specified by the secretary of state, and may conform to the following example if practical:

For Governor
(Vote for One)

Democrat (candidate’s name) 10 →
(residence, county)
Republican (candidate’s name) 11 →
(residence, county)
People’s (candidate’s name) 12 →
(residence, county)

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

Democratic Ticket
For House of Delegates
First Delegate District (Vote For Not More Than Two)

Republican Ticket
For House of Delegates
First Delegate District (Vote For Not More Than Two)

[If you marked a straight ticket and you mark any candidate in a different party for this office, you must mark all your choices because your straight ticket vote will not be counted for this office.]
(e) Any nonpartisan office such as board of education and any question to be voted on shall be placed on a separate page or otherwise separated from the partisan ballots, which separate page shall constitute a separate ballot where required.

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

(g) In addition to all other equipment and supplies required by the provisions of this article, the ballot commissioners shall cause to be printed a supply of instruction cards, sample ballots, facsimile diagrams of the vote recording device ballot and official printed ballots or ballot cards adequate for the orderly conduct of the election in each precinct in their county. In addition they shall provide all other materials and equipment necessary to the conduct of the election, including voting booths, appropriate facilities for the reception and safekeeping of ballot cards, the ballots of
absent voters and of challenged voters and of such
"independent" voters who shall, in primary elections
cast their votes on nonpartisan candidates and public
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
vote recording devices:

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

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

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

12 (4) When the ballot labels are delivered to the clerk
of the county commission, the clerk shall place them
in the vote recording devices in the proper order. The
remainder of such ballot labels for each machine shall
be retained by the clerk of the county commission for
use in an emergency.

(5) 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 appropri-
ate 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.
§3-5-2. Delegates to national conventions; alternate
delegates.

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

(b) The plan adopted by each political party of the
state shall state the method, subject to compliance
with their national party rules and not inconsistent
with the provisions of this chapter, for the election of
persons in each congressional district of the state as
delegates to the national convention of the party, for
the election or selection of persons in each congres-
sional district of the state as alternate delegates to the
national convention of the party and for the selection
of all remaining delegates and alternate delegates
allocated to the party in their national convention. Not
less than one hundred twenty days before the primary
election to be held in the year one thousand nine
hundred ninety-two, and in every fourth year there-
after, the governing body of each political party of the
state shall certify the plan adopted by the party under
signature of the state party chairman and file the plan
with the secretary of state. Any questions regarding
whether such plan was rightfully adopted by the party
shall be resolved by the party based upon party rules.
(c) The plan adopted by each political party of the state shall, to the extent permissible under their national party rules, provide for the following:

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

(2) If the rules of the national political party do not require the apportionment of delegates on the basis of their commitment for president, the persons receiving the highest number of votes as delegates in any congressional district to the number to which the district is entitled, shall be elected delegates. After the election of delegates in each congressional district to the number to which the district is entitled, the persons receiving the next highest votes in each congressional district and having qualified, as may be provided in the plan adopted by the party, shall be elected as alternate delegates to the number of alternate delegates to which the district is entitled.

(3) If the rules of the national political party require that the percentage of votes cast for the various presidential candidates determine the apportionment of committed candidates to be elected as delegates or alternates, regardless of whether such committed candidates received the highest number of votes, then the plan adopted by the political party of the state shall prescribe the number of delegates and alternates to be elected under such apportionment, the method by which the apportionment shall be made, and the method by which the secretary of state shall determine which delegates and alternates are elected. A committed candidate for delegate to national convention is one whose preference for a particular presidential candidate appears on the ballot.

(4) In the event the number of persons elected in the primary election in a congressional district is less than the number to which the district is entitled as delegates and alternate delegates to the national convention of the political party, the governing body of the
(5) The number of persons which each of the congressional districts in the state are entitled to elect as delegates to the national convention of the political party shall be apportioned among the congressional districts in the same proportion to the total number of delegates to the party's national convention elected in all congressional districts in the state as the population of the congressional district bears to the total population of the state based upon the census of population taken by the bureau of the census of the United States department of commerce in the year one thousand nine hundred ninety, and in every tenth year thereafter.

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

(e) Unless and until a political party of the state has adopted and certified a plan for the election of delegates to the national convention of the party and filed the plan with the secretary of state, there shall be elected by the voters of the political party of the state at the primary election to be held in the year one thousand nine hundred ninety-two, and in each fourth year thereafter, the number of persons to which the party is entitled as delegates-at-large, and by the voters of each political party in each congressional district in the state the number of delegates to which the district is entitled. The persons receiving the highest number of votes in the state as delegates-at-large, to the number to which the state is entitled, shall be elected delegates. The persons receiving the highest number of votes as delegates in any congres-
§3-5-3. Presidential preference.

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

11 In primary elections a plurality of the votes cast shall be sufficient for the nomination of candidates for office. Where only one candidate of a political party for any office in a political division, including party
comitteemen 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 the executive committee of the party for the political division in which such persons are candidates.

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

Any person who is eligible to hold and seeks to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this chapter shall file a certificate of
announcement declaring as a candidate for the nomination or election to such office.

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

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

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

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

The certificate of announcement shall be filed with the proper officer 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 by the United States postal service before that hour.

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

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

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

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

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

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

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

(7) For candidates for delegate to national convention, the name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot; or, a statement that the candidate prefers to remain “uncommitted”;

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

(9) The words “subscribed and sworn to before me this ____ day of ________, 19 __,” and a space for the signature of the officer giving the oath.

The secretary of state or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or remove the certification of the candidacy upon receipt of a certified copy of the voter's registration record of the candidate evidencing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the sixty days immediately preceding the filing of the certificate: Provided, That unless a signed formal complaint of violation of this section and the certified copy of the voter's registration record of the candidate be filed with the officer receiving that candidate's certificate of announcement no later than ten days following the close of the filing period, the candidate shall not be refused certification for this reason.
(c) The certificate of announcement shall be subscribed to and sworn to 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 is guilty of false swearing and shall be punished as set forth in section three, article nine of this chapter.

(d) Any candidate for delegate to a national convention may change his or her statement of presidential preference by notifying the secretary of state by letter received by the secretary of state no later than the third Tuesday following the close of candidate filing. When the rules of the political party allow each presidential candidate to approve or reject candidates for delegate to convention who may appear on the ballot as committed to that presidential candidate, the presidential candidate or the candidate's committee on his or her behalf may file a list of approved or rejected candidates for delegate, and the secretary of state shall list as “uncommitted” any candidate for delegate who is disapproved by the presidential candidate.

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

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

The provisions of this section shall apply to the primary election held in the year one thousand nine
§3-5-11. Withdrawals; filling vacancies in candidacy; publication.

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

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

(c) If after the time is closed for announcing as a candidate there is a vacancy on the ballot caused by failure of any person of a party to file for each available seat of each available office, the executive committee of the party for the political division within which such candidate was to be voted for, or its chair if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer. Certification of the appointment by the executive committee or its chair, the candidate’s certificate of announcement, and the filing fee must be received by the appropriate filing officer as follows: For an appointment by an executive committee, no later than the second Friday following the close of filing, for an appointment by its chair, no later than the third
Tuesday following the close of filing. A candidate appointed to fill a vacancy on the ballot under this subsection shall have his or her name printed on the primary ballot for that party.

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

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

(a) The heading of every ballot shall be printed in display type. The heading shall contain a ballot title, the name of the county, the state, the words “Primary Election” and the month, day and year of the election. The ballot title of the political party ballots shall contain the words “Official Ballot of the (Name) Party” and the official symbol of the political party may be included in the heading. The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for the board of education shall contain the words “Nonpartisan Ballot of Election of Members of the __________ County Board of Education”. The districts for which less than two candidates may be elected and the number of available seats shall be specified and the names of the candidates shall be printed without reference to political party affiliation, and without designation as to a particular term of office. Any other ballot or portion of a ballot on a question shall have a heading which clearly states the purpose of the election, according to the statutory requirements for that question.

(b) (1) For paper ballots, the heading of the ballot shall be separated from the rest of the ballot by heavy lines, and the offices shall be arranged in columns with the following headings, from left to right across the ballot: “National Ticket”, “State Ticket”, “County Ticket”, and, in a presidential election year, “National Convention”, or, in a nonpresidential election year “District Ticket”. The columns shall be separated by heavy lines. Within the columns, the offices shall be arranged in the order prescribed in section thirteen-a of this article.
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(2) For voting machines, electronic voting devices, and any ballot tabulated by electronic means, the offices shall appear in the same sequence as prescribed in section thirteen-a, and under the same headings as prescribed in subsection (a) of this section. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements, subject to approval by the secretary of state.

(3) The title of each office shall be separated from preceding offices or candidates by a line, and shall be printed in bold type, no smaller than eight point. Below the office shall be printed the number of the district, if any, the number of the division, if any, and the words “Vote for ___” with the number to be nominated or elected or “Vote For Not More Than ___” in multi-candidate elections. For offices in which there are limitations relating to the number of candidates which may be nominated, elected or appointed to or hold office at one time from a political subdivision within the district or county in which they are elected, there shall be a clear explanation of such limitation, as prescribed by the secretary of state, printed in bold type immediately preceding the names of the candidates for those offices on the ballot in every voting system.

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

(d) (1) The name of every candidate certified by the secretary of state or the board of ballot commissioners shall be printed in capital letters in no smaller than eight point type on the ballot for the appropriate precincts. Subject to the rules promulgated by the secretary of state, the name of each candidate shall appear in the form set out by the candidate on the certificate of announcement, but in no case shall the
name misrepresent the identity of the candidate, nor
shall the name include any title, position, rank, degree
or nickname implying or inferring any status as a
member of a class or group or affiliation with any
system of belief.

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

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

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

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

(f) In presidential election years, the words “For
election in accordance with the plan adopted by the
party and filed with the secretary of state” shall be
printed following the names of all candidates for
delegate to national convention.

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

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

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

(j) Absent voters’ ballots shall be in all respects like
other official ballots, except that three blank lines shall
be printed on the back of the ballot or ballot card in
the lower left corner with the words “Ballot Commis-
ioners” printed underneath.

(k) The face of sample paper ballots and sample
ballot labels shall be like other official ballots or ballot
labels, except that the word “sample” shall be prom-
inent across the front of the ballot in such a
way that the names of candidates are not obscured,
and the word “sample” may be printed in red ink. No
printing shall be placed on the back of the sample.

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

(a) The order of offices for state and county elections
on all ballots within the state shall be as prescribed
herein. When the office does not appear on the ballot
in an election, then it shall be omitted from the
sequence. When an unexpired term for an office appears on the ballot along with a full term, the unexpired term shall appear immediately below the full term.

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

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

COUNTY TICKET: Circuit judge in single-county districts, clerk of the circuit court, county commissioner, clerk of the county commission, prosecuting attorney, sheriff, assessor, magistrate, surveyor, congressional district executive committee, senatorial district executive committee in multi-county districts, delegate district executive committee in multi-county districts

NATIONAL CONVENTION: Delegate to the national convention — at-large, delegate to the national convention — congressional district

DISTRICT TICKET: County executive committee.

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

(1) On the fourth Tuesday following the close of the candidate filing, beginning at nine o'clock a.m., a drawing by lot shall be conducted in the office of the clerk of the circuit court in each county. Notice of the drawing shall be given on the form for the certificate of announcement, and no further notice shall be required. The clerk of the circuit court shall superintend and conduct the drawing, and the method of conducting the drawing shall be prescribed by the secretary of state.
(2) Except as provided herein, the position of each candidate within each office division shall be determined by the position drawn for that candidate individually: Provided, That if fewer candidates file for an office division than the total number to be nominated or elected, the vacant positions shall appear following the names of all candidates for the office.

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

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

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

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

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

(2) Each appointment made under this section is complete only upon the receipt by the proper filing 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
days before the general election.

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

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

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

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

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

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

(1) The name and ticket of each party which is a
political party under the provisions of section eight, article one of this chapter;

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

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

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

(c) (1) For all ballot systems, the ballot heading shall be in display type and shall contain the words, “Official Ballot, General Election” and the name of the county and the month, day and year of the election.

(2) After the heading, each ballot shall contain, laid out in parallel columns, rows or pages as required by the particular voting system, the party emblem, the position for straight party voting for each party and the name of each party as prescribed in subsection (a) of this section. On paper ballots, the position for straight party voting shall be a heavy circle, three-quarters inch in diameter, surrounded by the words “For a straight ticket mark within this circle” printed in bold six point type. On all other ballots or ballot labels, the positions for straight party voting shall be marked “Straight Party Ticket”. For ballots tabulated electronically, the secretary of state shall prescribe a uniform number for the straight ticket position for each party.

(3) The party whose candidate for president received the highest number of votes at the last preceding presidential election shall be placed in the left, or first
column, row or page, as is appropriate to the voting system. The party which received the second highest vote shall be next, and so on. Any groups or third parties which did not have a candidate for president on the ballot in the previous presidential election shall be placed in the sequence in which the final certificates of nomination by petition were filed.

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

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

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

On paper ballots, the specific instructions shall be placed below the office name of any partisan office
(5) For all ballots, any columns, rows or sections in which the ticket of one party appears shall be clearly separated from the other columns, rows or sections by a heavy line or other clear division. For each party, the offices shall be arranged in the order prescribed in section thirteen-a, article five of this chapter, under the appropriate tickets, which shall be headed “National Ticket”, “State Ticket” and “County Ticket”. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements, subject to approval by the secretary of state.

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

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

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

(3) Except in voting machine systems, in any office where more than one person is to be elected, the names of the candidates for the office shall be staggered so that no two candidates for that office shall appear directly opposite any other candidate, as shown in the example below:
122 For House of Delegates  
123 First Delegate District  
124 (Vote For Not More  
125 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.
(B) In machine and electronically tabulated ballot systems in which write-in votes must be made in a place other than on the ballot label, if there is a vacancy in nomination leaving fewer candidates in any party than can be elected to that office, the words “No Candidate Nominated” shall be printed in the space that would be occupied by the name of the candidate, and for an office for which more than one is to be elected, any such vacancy shall appear after any other candidates for the office.

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

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

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

ARTICLE 10. FILLING VACANCIES.

§3-10-1. Elections to fill vacancies.

Except as provided in sections three and four of this article, elections to fill vacancies shall be conducted to fill any unexpired term when more than one year of the term of office remains at the time of such election. When less than one year of the term of office remains at the time of the election, the person appointed to fill the vacancy shall continue in office until the completion of the term. Elections to fill vacancies shall be
held at the same places, and superintended, conducted and returned, and the result ascertained, certified and declared, in the same manner, and by the same officers, as in general elections. The persons elected, having first duly qualified, shall enter upon the duties of their respective offices.

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

When a vacancy occurs in the office of clerk of the circuit court, the circuit court by a majority vote of the judges, or the chief judge thereof in vacation, shall fill the same by appointment of a person of the same political party as the officeholder vacating the office until the next general election, or until the completion of the term if the term ends on the thirty-first day of December following the next general election and the person so appointed shall hold office until his or her successor is elected and qualified. At such general election a clerk shall be elected for the unexpired term if the unexpired term is greater than one year. The circuit court, or the chief judge thereof in vacation, shall cause a notice of such election to be published prior to such election as a Class II-O 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 the county. If the vacancy occurs no later than the eighty-fourth day before the primary election held to nominate candidates to be voted for at the general election, at which any such vacancy is to be filled, candidates to fill such vacancy shall be nominated at such primary election in accordance with the time requirements and the provisions and procedures prescribed in section eleven, article five of this chapter. If the vacancy occurs after the eighty-fourth day before the primary but not later than the eighty-fourth day before the general election, they shall be nominated by the county executive committee in the manner provided in section nineteen, article five, of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the circuit court of such county, shall be
§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.

1 Any vacancy in the office of county commissioner or clerk of county commission shall be filled by the county commission of the county, unless the number of vacancies in a county commission deprive that body of a quorum, in which case the governor of the state shall fill any vacancy in such county commission necessary to create a quorum thereof. Persons appointed shall be of the same political party as the officeholder vacating the office and shall continue in office until the next general election is certified, or until the completion of the term if the term ends on the thirty-first day of December following the next general election. The vacancy shall be filled by election for the unexpired term if the unexpired term is greater than one year: Provided, That in the event a quorum of the county commission cannot agree upon a person to fill a vacancy in the office of county commissioner it shall be the mandatory, nondiscretionary duty of each such county commissioner, within sixty days from the date such vacancy occurs, to submit in person to the chief judge of the circuit court of such county, the name of one person who is a member of the same political party as was the person whose vacancy is being filled and was such a member for at least one year next preceding the filling of such vacancy and who is legally qualified and willing to fill such vacancy. The judge shall thereupon, in the presence of the quorum of the county commission, cause each name to be written on a separate piece of paper, shall fold or roll up the pieces of paper so as to resemble each other and so that the name written thereon shall not be visible on the outside, and shall deposit the pieces of paper in a box from which one of the county commissioners, selected by lot under the supervision of such judge, shall, in the presence of each other and the judge, draw one of the names and the person whose name is so drawn shall be the county commission’s choice to fill such vacancy. The
43 [Enr. S. B. No. 629

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

41 Notice of such election as aforesaid shall be given by
order of the county commission and published as
prescribed in section six of this article. Nomination of
candidates to fill the office for an unexpired term in
the office of county commission or clerk of the county
commission shall be made in the manner prescribed
for making nominations to fill a vacancy in the office
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
attorney, sheriff, assessor or county surveyor shall be
filled by the county commission by appointment of a
person of the same political party as the officeholder
vacating the office, and the appointed person shall
hold the office until the next general election is
certified, or until the completion of the term if the
term ends on the thirty-first day of December follow-
ing the next general election. Such vacancy shall be
filled by election for the unexpired term if the
unexpired term is greater than one year. Notice of an
election to fill a vacancy in any of the offices named
in this section shall be given by the county commis-
sion, or by the president thereof in vacation, and
published or posted in the manner prescribed in
section six of this article. Nomination of candidates to
fill any such vacancy shall be made in the manner
prescribed in said section six of this article for nomi-
nating candidates to fill a vacancy in the office of the
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
forty-five days any vacancy that occurs in its member-
ship. In the event that the board does not fill the
vacancy within forty-five days, the state superinten-
dent of schools shall appoint a person to fill the vacancy:

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

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

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than eighty-four days before the general election, the vacancy shall be filled by election in the general election, and the appointment shall continue until a successor is elected and certified.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is this the ... day of ... 1991.

Governor