

SB 196

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2002

ENROLLED

Committee Substitute for
SENATE BILL NO. 196

(By Senator Wootton, et al)

PASSED February 5, 2002

In Effect from Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 196

(SENATORS WOOTON, BURNETTE, HUNTER, KESSLER, OLIVERIO,
REDD, ROSS, ROWE, SNYDER, FACEMYER, DEEM, MCCABE,
MCKENZIE AND MINARD, *original sponsors*)

[Passed February 5, 2002; in effect from passage.]

AN ACT to amend and reenact sections twenty-nine, thirty and thirty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections seven and nineteen, article two of said chapter; to amend and reenact sections two-a, three, four, seven, eight and eleven, article three of said chapter; to amend and reenact sections ten and twenty, article four of said chapter; to amend and reenact sections three, nineteen-a and twenty-one, article four-a of said chapter; to amend and reenact section thirteen, article five of said chapter; to amend and reenact sections two, four-a and six, article six of said chapter; to amend and reenact section six, article seven of said chapter; to amend and reenact section four-a, article

eight of said chapter; and to amend and reenact section thirteen, article five, chapter eight of said code, all relating to election laws generally; defining term "election official trainee"; providing for the discretionary appointment of election official trainees; requiring county executive committees to nominate certain number of alternates to serve as election officials; authorizing governing bodies to confirm qualifications of persons nominated to serve as election officials; removing requirement that election officials appointed on election day be from same political party as person originally appointed to serve; prohibiting candidates from assisting persons who are voting; eliminating inconsistencies relating to extended hours of voter registration; establishing when separate municipal precinct books must be maintained; eliminating prohibition on presence of metal detectors in absentee voting location of courthouse; reducing the time period in which persons may vote a regular absentee ballot; changing the process of delivery and counting of certain absentee ballots; authorizing county clerks to determine whether absentee ballots should be counted at the precincts or the central counting center; requiring election officials to report certain findings to the prosecuting attorney; permitting absentee ballots without proper signatures of election officials to be counted in certain circumstances; providing for the use of electronic voting or direct recording election equipment where available for absentee voting; shortening time period in which county commissions may adopt electronic voting systems; providing for application of amendment; permitting ballots voted on election day without proper signatures of election officials to be counted in certain circumstances; authorizing language on ballot describing fact that no candidates are listed for vacant positions; making certain technical revisions; eliminating filing fee for write-in candidates; providing options for the counting of absentee ballots in paper ballot systems; clarifying certain language pertaining to election contests and confirming applicability of law to municipal elections; authorizing the reopening of political party committees for a limited period of time; and requiring municipalities to maintain permanent registration of voters.

Be it enacted by the Legislature of West Virginia:

That sections twenty-nine, thirty and thirty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections seven and nineteen, article two of said chapter be amended and reenacted; that sections two-a, three, four, seven, eight and eleven, article three of said chapter be amended and reenacted; that sections ten and twenty, article four of said chapter be amended and reenacted; that sections three, nineteen-a and twenty-one, article four-a of said chapter be amended and reenacted; that section thirteen, article five of said chapter be amended and reenacted; that sections two, four-a and six, article six of said chapter be amended and reenacted; that section six, article seven of said chapter be amended and reenacted; that section four-a, article eight of said chapter be amended and reenacted; and that section thirteen, article five, chapter eight of said code be amended and reenacted, all to read as follows:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.

1 (a) For the purpose of this article:

2 (1) The term "standard receiving board" means those
3 election officials charged with conducting the process of
4 voting within a precinct and consists of five persons,
5 including one team of poll clerks, one team of election
6 commissioners for the ballot box and one additional
7 election commissioner: *Provided*, That if a municipal
8 election is held at a time when there is no county or state
9 election, then the standard receiving board is to consist of
10 four persons, including one team of poll clerks and one
11 team of election commissioners for the ballot box;

12 (2) The term "expanded receiving board" means a
13 standard receiving board as defined in subdivision (1) of
14 this subsection and one additional team of poll clerks;

15 (3) The term "counting board" means those election
16 officials charged with counting the ballots at the precinct

17 in counties using paper ballots and includes one team of
18 poll clerks, one team of election commissioners and one
19 additional commissioner;

20 (4) The term "team of poll clerks" or "team of election
21 commissioners" means two persons appointed by opposite
22 political parties to perform the specific functions of the
23 office: *Provided*, That no team of poll clerks or team of
24 election commissioners may consist of two persons with
25 the same registered political party affiliation or two
26 persons registered with no political party affiliation; and

27 (5) The term "election official trainee" means an
28 individual who is sixteen or seventeen years of age who
29 meets the requirements of subdivisions (2), (3), (4), (5) and
30 (6), subsection (a), section twenty-eight of this article who
31 serves as a trainee to the standard receiving board on a
32 volunteer basis by assisting the standard receiving board
33 in performing its official duties and who receives credits
34 for an official community service program as may be
35 required to obtain a high school diploma.

36 (b) The composition of boards of election officials shall
37 be as follows:

38 (1) In any primary, general or special election other than
39 a presidential primary or presidential general election,
40 each election precinct is to have one standard receiving
41 board;

42 (2) In presidential primary and presidential general
43 elections, each election precinct is to have one receiving
44 board as follows:

45 (A) For precincts of less than five hundred registered
46 voters, one standard receiving board;

47 (B) For precincts of five hundred to seven hundred
48 registered voters, one standard receiving board or, at the
49 discretion of the county commission, one expanded receiv-
50 ing board; and

51 (C) For precincts of more than seven hundred registered
52 voters, one expanded receiving board;

53 (3) In any election conducted using paper ballots,
54 counting boards may be allowed, disallowed or required as
55 follows:

56 (A) For any state, county or municipal special election,
57 no counting board may be allowed;

58 (B) In a statewide primary or general election, one
59 counting board is required for any precinct of more than
60 four hundred registered voters and one counting board
61 may be allowed, at the discretion of the county commis-
62 sion, for any precinct of at least two hundred but no more
63 than four hundred registered voters; and

64 (C) In a municipal primary or general election, one
65 counting board may be allowed, at the discretion of the
66 municipal governing body, for any precinct of more than
67 two hundred registered voters.

68 (c) For each primary and general election in the county,
69 the county commission shall designate the number and
70 type of election boards for the various precincts according
71 to the provisions of this section. At least eighty-four days
72 before each primary and general election the county
73 commission shall notify the county executive committees
74 of the two major political parties in writing of the number
75 of nominations which may be made for poll clerks and
76 election commissioners.

77 (d) For each municipal election, the governing body of
78 the municipality shall perform the duties of the county
79 commission as provided in this section.

80 (e) For each primary, general or special election in the
81 county, the county commission, and for each municipal
82 election, the governing body of the municipality, may
83 appoint one or two election official trainees for each
84 precinct.

§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.

1 (a) For any primary, general or special election held
2 throughout a county, poll clerks and election commission-
3 ers may be nominated as follows:

4 (1) The county executive committee for each of the two
5 major political parties may, by a majority vote of the
6 committee at a duly called meeting, nominate one qualified
7 person for each team of poll clerks and one qualified
8 person for each team of election commissioners to be
9 appointed for the election;

10 (2) The appointing body shall select one qualified person
11 as the additional election commissioner for each board of
12 election officials;

13 (3) Each county executive committee shall also nominate
14 qualified persons as alternates for at least ten percent of
15 the poll clerks and election commissioners to be appointed
16 in the county and is authorized to nominate as many
17 qualified persons as alternates as there are precincts in the
18 county to be called upon to serve in the event any of the
19 persons originally appointed fail to accept appointment or
20 fail to appear for the required training or for the prepara-
21 tion or execution of their duties;

22 (4) When an executive committee nominates qualified
23 persons as poll clerks, election commissioners or alternates,
24 the committee, or its chairman or secretary on its behalf,
25 shall file in writing with the appointing body, no later than
26 the fifty-sixth day before the election, a list of those
27 persons nominated and the positions for which they are
28 designated.

29 (b) For any municipal primary, general or special elec-
30 tion, the poll clerks and election commissioners may be
31 nominated as follows:

32 (1) In municipalities which have municipal executive
33 committees for the two major political parties in the
34 municipality, each committee may nominate election
35 officials in the manner provided for the nomination of
36 election officials by county executive committees in
37 subsection (a) of this section;

38 (2) In municipalities which do not have executive
39 committees, the governing body shall provide by ordinance
40 for a method of nominating election officials or shall
41 nominate as many eligible persons as are required, giving
42 due consideration to any recommendations made by voters
43 of the municipality or by candidates on the ballot.

44 (c) The governing body responsible for appointing
45 election officials is:

46 (1) The county commission for any primary, general or
47 special election ordered by the county commission and any
48 joint county and municipal election;

49 (2) The board of education for any special election
50 ordered by the board of education conducted apart from
51 any other election;

52 (3) The municipal governing body for any primary,
53 general or special municipal election ordered by the
54 governing body.

55 (d) The qualifications for persons nominated to serve as
56 election officials may be confirmed prior to appointment
57 by the clerk of the county commission for any election
58 ordered by the county commission or for any joint county
59 and municipal election and by the official recorder of the
60 municipality for a municipal election.

61 (e) The appropriate governing body shall appoint the
62 election officials for each designated election board no
63 later than the forty-ninth day before the election as
64 follows:

65 (1) Those eligible persons whose nominations for poll
66 clerk and election commissioner were timely filed by the
67 executive committees and those additional persons selected
68 to serve as an election commissioner are to be appointed;

69 (2) The governing body shall fill any positions for which
70 no nominations were filed.

71 (f) At the same time as the appointment of election
72 officials or at a subsequent meeting, the governing body
73 shall appoint persons as alternates: *Provided*, That no
74 alternate may be eligible for compensation for election
75 training unless the alternate is subsequently appointed as
76 an election official, or is instructed to attend and actually
77 attends training as an alternate, and, if called to do so, also
78 serves at the polls on election day. Alternates shall be
79 appointed and serve as follows:

80 (1) Those alternates nominated by the executive commit-
81 tees shall be appointed;

82 (2) The governing body may appoint additional alter-
83 nates who may be called upon to fill vacancies after all
84 alternates designated by the executive committees have
85 been assigned, have declined to serve or have failed to
86 attend training; and

87 (3) The governing body may determine the number of
88 persons who may be instructed to attend training as
89 alternates.

90 (g) The clerk of the county commission shall appoint
91 qualified persons to fill all vacancies existing after all
92 previously appointed alternates have been assigned, have
93 declined to serve or have failed to attend training.

94 (h) Within seven days following appointment, the clerk
95 of the county commission shall notify, by first-class mail,
96 all election commissioners, poll clerks and alternates of the
97 fact of their appointment and include with the notice a
98 response notice form for the appointed person to return

99 indicating whether or not he or she agrees to serve in the
100 specified capacity in the election.

101 (i) The position of any person notified of appointment
102 who fails to return the response notice or otherwise
103 confirm to the clerk of the county commission his or her
104 agreement to serve within fourteen days following the date
105 of appointment is considered vacant and the clerk shall
106 proceed to fill the vacancies according to the provisions of
107 this section.

108 (j) If an appointed election official fails to appear at the
109 polling place by forty-five minutes past five o'clock a.m. on
110 election day, the election officials present shall contact the
111 office of the clerk of the county commission for assistance
112 in filling the vacancy and the clerk shall proceed as
113 follows:

114 (1) The clerk may attempt to contact the person origi-
115 nally appointed, may assign an alternate nominated by the
116 same political party as the person absent if one is available
117 or, if no alternate is available, may appoint another
118 eligible person;

119 (2) If the election officials present are unable to contact
120 the clerk within a reasonable time, they shall diligently
121 attempt to fill the position with an eligible person of the
122 same political party as the party that nominated the person
123 absent until a qualified person has agreed to serve;

124 (3) If two teams of election officials, as defined in section
125 twenty-nine of this article, are present at the polling place,
126 the person appointed to fill a vacancy in the position of the
127 additional commissioner may be of either political party.

128 (k) In a municipal election, the recorder or other official
129 designated by charter or ordinance to perform election
130 responsibilities shall perform the duties of the clerk of the
131 county commission as provided in this section.

§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.

1 (a) Any person desiring to vote in an election shall, upon
2 entering the election room, clearly state his or her name
3 and residence to one of the poll clerks who shall thereupon
4 announce the same in a clear and distinct tone of voice. If
5 that person is found to be duly registered as a voter at that
6 precinct, he or she shall be required to sign his or her name
7 in the space marked "signature of voter" on the pollbook
8 prescribed and provided for the precinct. If that person is
9 physically or otherwise unable to sign his or her name, his
10 or her mark shall be affixed by one of the poll clerks in the
11 presence of the other and the name of the poll clerk
12 affixing the voter's mark shall be indicated immediately
13 under the affixation. No ballot may be given to the person
14 until he or she so signs his or her name on the pollbook or
15 his or her signature is so affixed thereon.

16 (b) The clerk of the county commission is authorized,
17 upon verification that the precinct at which a handicapped
18 person is registered to vote is not handicap accessible, to
19 transfer that person's registration to the nearest polling
20 place in the county which is handicap accessible. Requests
21 by these persons for a transfer of registration shall be
22 received by the county clerk no later than thirty days prior
23 to the date of the election. Any handicapped person who
24 has not made a request for a transfer of registration at
25 least thirty days prior to the date of the election may vote
26 a challenged ballot at a handicap accessible polling place
27 in the county of his or her registration and, if during the
28 canvass the county commission determines that the person
29 had been registered in a precinct not handicap accessible,
30 the voted ballot, if otherwise valid, shall be counted. The
31 handicapped person may vote in the precinct to which the
32 registration was transferred only as long as the disability
33 exists or the precinct from which the handicapped person
34 was transferred remains inaccessible to the handicapped.
35 To ensure confidentiality of the transferred ballot, the

36 county clerk processing the ballot shall provide the voter
37 with an unmarked envelope and an outer envelope desig-
38 nated "challenged ballot/handicapped voter". After
39 validation of the ballot at the canvass, the outer envelope
40 shall be destroyed and the handicapped voter's ballot shall
41 be placed with other approved challenged ballots prior to
42 removal of the ballot from the unmarked envelope.

43 (c) When the voter's signature is properly on the
44 pollbook, the two poll clerks shall sign their names in the
45 places indicated on the back of the official ballot and shall
46 deliver the ballot to the voter to be voted by him or her
47 then without leaving the election room. If he or she
48 returns the ballot spoiled to the clerks, they shall immedi-
49 ately mark the ballot "spoiled" and it shall be preserved
50 and placed in a spoiled ballot envelope together with other
51 spoiled ballots to be delivered to the board of canvassers
52 and deliver to the voter another official ballot, signed by
53 the clerks on the reverse side as before done. The voter
54 shall thereupon retire alone to the booth or compartment
55 prepared within the election room for voting purposes and
56 there prepare his or her ballot, using a ballpoint pen of not
57 less than five inches in length or other indelible marking
58 device of not less than five inches in length. In voting for
59 candidates in general and special elections, the voter shall
60 comply with the rules and procedures prescribed in section
61 five, article six of this chapter.

62 (d) It is the duty of a poll clerk, in the presence of the
63 other poll clerk, to indicate by a check mark inserted in the
64 appropriate place on the registration record of each voter
65 the fact that the voter voted in the election. In primary
66 elections the clerk shall also insert thereon a distinguishing
67 initial or initials of the political party for whose candidates
68 the voter voted. If a person is challenged at the polls, the
69 challenge shall be indicated by the poll clerks on the
70 registration record together with the name of the chal-
71 lenger. The subsequent removal of the challenge shall be
72 recorded on the registration record by the clerk of the
73 county commission.

74 (e)(1) No voter may receive any assistance in voting
75 unless, by reason of blindness, disability, advanced age or
76 inability to read and write, that voter is unable to vote
77 without assistance. Any voter qualified to receive assis-
78 tance in voting under the provisions of this section may:

79 (A) Declare his or her choice of candidates to an election
80 commissioner of each political party who, in the presence
81 of the voter and in the presence of each other, shall prepare
82 the ballot for voting in the manner hereinbefore provided
83 and, on request, shall read over to the voter the names of
84 candidates on the ballot as so prepared;

85 (B) Require the election commissioners to indicate to him
86 or her the relative position of the names of the candidates
87 on the ballot, whereupon the voter shall retire to one of the
88 booths or compartments to prepare his or her ballot in the
89 manner hereinbefore provided;

90 (C) Be assisted by any person of the voter's choice, other
91 than the voter's present or former employer or agent of
92 that employer, the officer or agent of a labor union of
93 which the voter is a past or present member, or a candidate
94 on the ballot; or

95 (D) If he or she is handicapped, vote from an automobile,
96 outside the polling place or precinct, in the presence of an
97 election commissioner of each political party if all of the
98 following conditions are met:

99 (i) The polling place is not handicap accessible; and

100 (ii) No voters are voting or waiting to vote inside the
101 polling place.

102 (2) Any voter who requests assistance in voting but who
103 is believed not to be qualified for such assistance under the
104 provisions of this section shall nevertheless be permitted to
105 vote a challenged ballot with the assistance of any person
106 herein authorized to render assistance.

107 (3) Any one or more of the election commissioners or poll
108 clerks in the precinct may challenge the ballot on the
109 ground that the voter thereof received assistance in voting
110 it when in his or their opinion that the person who received
111 assistance in voting is not so illiterate, blind, disabled or of
112 such advanced age as to have been unable to vote without
113 assistance. The election commissioner or poll clerk or
114 commissioners or poll clerks making the challenge shall
115 enter the challenge and reason therefor on the form and in
116 the manner prescribed or authorized by article three of this
117 chapter.

118 (4) An election commissioner or other person who assists
119 a voter in voting:

120 (A) May not in any manner request or seek to persuade or
121 induce the voter to vote any particular ticket or for any
122 particular candidate or for or against any public question
123 and must not keep or make any memorandum or entry of
124 anything occurring within the voting booth or compart-
125 ment and must not, directly or indirectly, reveal to any
126 person the name of any candidate voted for by the voter or
127 which ticket he or she had voted or how he or she had
128 voted on any public question or anything occurring within
129 the voting booth or compartment or voting machine booth
130 except when required pursuant to law to give testimony as
131 to the matter in a judicial proceeding; and

132 (B) Shall sign a written oath or affirmation before
133 assisting the voter on a form prescribed by the secretary of
134 state stating that he or she will not override the actual
135 preference of the voter being assisted, attempt to influence
136 the voter's choice or mislead the voter into voting for
137 someone other than the candidate of voter's choice. The
138 person assisting the voters shall also swear or affirm that he
139 or she believes that the voter is voting free of intimidation
140 or manipulation: *Provided*, That no person providing
141 assistance to a voter is required to sign an oath or affirma-
142 tion where the reason for requesting assistance is the
143 voter's inability to vote without assistance because of

144 blindness as defined in section three, article fifteen,
145 chapter five of this code and the inability to vote without
146 assistance because of blindness is certified in writing by a
147 physician of the voter's choice and is on file in the office of
148 the clerk of the county commission.

149 (5) In accordance with instructions issued by the secre-
150 tary of state, the clerk of the county commission shall
151 provide a form entitled "list of assisted voters", the form
152 of which list shall likewise be prescribed by the secretary
153 of state. The commissioners shall enter the name of each
154 voter receiving assistance in voting the ballot, together
155 with the poll slip number of that voter and the signature of
156 the person or the commissioner from each party who
157 assisted the voter. If no voter has been assisted in voting
158 the ballot as herein provided, the commissioners shall
159 likewise make and subscribe to an oath of that fact on the
160 list.

161 (f) After preparing the ballot the voter shall fold the
162 same so that the face is not exposed and so that the names
163 of the poll clerks thereon are seen. The voter shall then
164 announce his or her name and present his or her ballot to
165 one of the commissioners who shall hand the same to
166 another commissioner, of a different political party, who
167 shall deposit it in the ballot box if the ballot is the official
168 one and properly signed. The commissioner of election
169 may inspect every ballot before it is deposited in the ballot
170 box to ascertain whether it is single, but without unfolding
171 or unrolling it so as to disclose its content. When the voter
172 has voted, he or she shall retire immediately from the
173 election room and beyond the sixty-foot limit thereof and
174 may not return except by permission of the commissioners.

175 (g) Following the election, the oaths or affirmations
176 required by this section from those assisting voters,
177 together with the "list of assisted voters", shall be returned
178 by the election commissioners to the clerk of the county
179 commission along with the election supplies, records and
180 returns, who shall make the oaths, affirmations and list

181 available for public inspection and who shall preserve
182 these for a period of twenty-two months or until disposi-
183 tion is authorized or directed by the secretary of state, or
184 court of record.

185 (h) Any person making an oath or affirmation required
186 under the provisions of this section who knowingly swears
187 falsely or any person who counsels, advises, aids or abets
188 another in the commission of false swearing under this
189 section is guilty of a misdemeanor and, upon conviction
190 thereof, shall be fined not more than one thousand dollars
191 or imprisoned in the county or regional jail for a period of
192 not more than one year, or both fined and imprisoned.

193 (i) Any election commissioner or poll clerk who autho-
194 rizes or provides unchallenged assistance to a voter when
195 the voter is known to the election commissioner or poll
196 clerk not to require assistance in voting is guilty of a felony
197 and, upon conviction thereof, shall be fined not more than
198 five thousand dollars or imprisoned in a state correctional
199 facility for a period of not less than one year nor more than
200 five years, or both fined and imprisoned.

ARTICLE 2. REGISTRATION OF VOTERS.

**§3-2-7. Hours and days of registration in the office of the clerk
of the county commission; in-person application for
voter registration; identification required.**

1 (a) The clerk of the county commission shall provide
2 voter registration services at all times when the office of
3 the clerk is open for regular business. In addition, the
4 office of the clerk shall remain open for voter registration
5 from 9:00 a.m. until 8:00 p.m. on the two weekdays imme-
6 diately preceding the close of registration for statewide
7 primary and general elections, other than legal holidays,
8 and from 9:00 a.m. until 5:00 p.m. on the Saturday prior to
9 the close of registration for statewide primary and general
10 elections.

11 (b) Any eligible voter who desires to apply for voter
12 registration in person at the office of the clerk of the

13 county commission shall complete a voter registration
14 application on the prescribed form and shall sign the oath
15 required on that application in the presence of the clerk of
16 the county commission or his or her deputy. The applicant
17 shall then present valid identification and proof of age,
18 except that the clerk may waive the proof of age require-
19 ment if the applicant is clearly over the age of eighteen.

20 (c) The clerk shall attempt to establish whether the
21 residence address given is within the boundaries of an
22 incorporated municipality and, if so, make the proper
23 entry required for municipal residents to be properly
24 identified for municipal voter registration purposes.

25 (d) Upon receipt of the completed registration applica-
26 tion, the clerk shall either:

27 (1) Provide a notice of procedure for verification and
28 notice of disposition of the application and immediately
29 begin the verification process prescribed by the provisions
30 of section sixteen of this article; or

31 (2) Upon presentation of a current driver's license or
32 state-issued identification card containing the residence
33 address as it appears on the voter registration application,
34 issue the receipt of registration.

**§3-2-19. Maintenance of active and inactive registration files in
precinct record books and county alphabetical
registration file.**

1 (a) Each county shall continue to maintain a record of
2 each active and inactive voter registration in precinct
3 registration books until the state uniform data system is
4 adopted pursuant to the provisions of section twenty of
5 this article, fully implemented and given final approval by
6 the secretary of state. The precinct registration books shall
7 be maintained as follows:

8 (1) Each active voter registration shall be entered in the
9 precinct book or books for the county precinct in which the
10 voter's residence is located and shall be filed alphabeti-

11 cally by name, alphabetically within categories, or by
12 numerical street address, as determined by the clerk of the
13 county commission for the effective administration of
14 registration and elections. No active voter registration
15 record shall be removed from the precinct registration
16 books unless the registration is lawfully transferred or
17 canceled pursuant to the provisions of this article.

18 (2) Each voter registration which is designated "inactive"
19 pursuant to the procedures prescribed in section twenty-
20 seven of this article shall be retained in the precinct book
21 for the county precinct in which the voter's last recorded
22 residence address is located until the time period expires
23 for which a record must remain on the inactive files. Every
24 inactive registration shall be clearly identified by a
25 prominent tag or notation or arranged in a separate section
26 in the precinct book clearly denoting the registration
27 status. No inactive voter registration record shall be
28 removed from the precinct registration books unless the
29 registration is lawfully transferred or canceled pursuant to
30 the provisions of this article.

31 (b) For municipal elections, the registration records of
32 active and inactive voters shall be maintained as follows:

33 (1) County precinct books shall be used in municipal
34 elections when the county precinct boundaries and the
35 municipal precinct boundaries are the same and all
36 registrants of the precinct are entitled to vote in state,
37 county and municipal elections within the precinct or
38 when the registration records of municipal voters within a
39 county precinct are separated and maintained in a separate
40 municipal section or book for that county precinct and can
41 be used either alone or in combination with other precinct
42 books to make up a complete set of registration records for
43 the municipal election precinct.

44 (2) Upon request of the municipality, and if the clerk of
45 the county commission does not object, separate municipal
46 precinct books shall be maintained in cases where municip-
47 al or ward boundaries divide county precincts and it is

48 impractical to use county precinct books or separate
49 municipal sections of those precinct books. If the clerk of
50 the county commission objects to the request of a munici-
51 pality for separate municipal precinct books, the state
52 election commission must determine whether the separate
53 municipal precinct books should be maintained.

54 (3) No registration record may be removed from a
55 municipal registration record unless the registration is
56 lawfully transferred or canceled pursuant to the provisions
57 of this article in both the county and the municipal regis-
58 tration records.

59 (c) No later than the first day of January, one thousand
60 nine hundred ninety-five, and within thirty days following
61 the entry of any annexation order or change in street
62 names or numbers, the governing body of an incorporated
63 municipality shall file with the clerk of the county com-
64 mission a certified current official municipal boundary
65 map and a list of streets and ranges of street numbers
66 within the municipality to assist the clerk in determining
67 whether a voter's address is within the boundaries of the
68 municipality.

69 (d) Each county, so long as precinct registration books
70 are maintained, shall maintain a duplicate record of every
71 active and inactive voter registration in a county alphabet-
72 ical file. The alphabetical file may be maintained on
73 individual paper forms or, upon approval of the secretary
74 of state of a qualified data storage program, may be
75 maintained in digitized format. A qualified data storage
76 program shall be required to contain the same information
77 for each voter registration as the precinct books, shall be
78 subject to proper security from unauthorized alteration
79 and shall be regularly duplicated to backup data storage to
80 prevent accidental destruction of the information on file.

ARTICLE 3. VOTING BY ABSENTEES.

**§3-3-2a. Voting booths within public view to be provided;
prohibition against display of campaign material.**

1 Throughout the period of absentee voting in person, the
2 official designated to supervise and conduct absentee
3 voting shall make the following provisions for voting:

4 (1) The official shall provide a sufficient number of
5 voting booths or devices appropriate to the voting system
6 at which voters may prepare their ballots. The booths or
7 devices are to be in an area separate from but within clear
8 view of the public entrance area of the official's office or
9 other area designated by the county commission for
10 absentee voting and are to be arranged to ensure the voter
11 complete privacy in casting the ballot.

12 (2) The official shall make the voting area secure from
13 interference with the voter and shall ensure that voted and
14 unvoted ballots are at all times secure from tampering. No
15 person, other than a person lawfully assisting the voter
16 according to the provisions of this chapter, may be permit-
17 ted to come within five feet of the voting booth while the
18 voter is voting. No person, other than the officials or
19 employees of the official designated to supervise and
20 conduct absentee voting or members of the board of ballot
21 commissioners assigned to conduct absentee voting, may
22 enter the area or room set aside for voting.

23 (3) The official designated to supervise and conduct
24 absentee voting shall request the county commission
25 designate another area within the county courthouse or
26 any annex of the courthouse as a portion of the official's
27 office for the purpose of absentee voting in the following
28 circumstances:

29 (A) If the voting area is not accessible to voters with
30 physical disabilities;

31 (B) If the voting area is not within clear view of the
32 public entrance of the office of the official designated to
33 supervise and conduct absentee voting; or

34 (C) If there is no suitable area for absentee voting within
35 the office.

36 Any designated area is subject to the same requirements
37 as the regular absentee voting area.

38 (4) No person may do any electioneering nor may any
39 person display or distribute in any manner, or authorize
40 the display or distribution of, any literature, posters or
41 material of any kind which tends to influence the voting
42 for or against any candidate or any public question on the
43 property of the county courthouse or any annex facilities
44 during the entire period of regular in-person absentee
45 voting. The official designated to supervise and conduct
46 absentee voting is hereby authorized to remove the mate-
47 rial and to direct the sheriff of the county to enforce the
48 prohibition.

§3-3-3. Voting an absentee ballot in person.

1 (a) Regular absentee voting in person is to be conducted
2 during regular business hours beginning on the fifteenth
3 day before the election and continuing through 1:00 p.m.
4 the Monday before the election for any election held on a
5 Tuesday, or continuing through 1:00 p.m. the day before
6 the election for any election held on another day. For any
7 election held on a Tuesday, regular absentee voting in
8 person is to be available from 9:00 a.m. to 5:00 p.m. on the
9 Saturday before the election.

10 (b) Special absentee voting in person for persons eligible
11 to vote an absentee ballot under the provisions of subsec-
12 tion (c), section one of this article is to be conducted during
13 regular business hours in the office of the official desig-
14 nated to supervise and conduct absentee voting beginning
15 on the forty-second day before the election and continuing
16 until the first day when regular absentee voting in person
17 begins. Any person seeking to vote absentee under this
18 subsection is to first give an affidavit, on a form prescribed
19 by the secretary of state, stating under oath the specific
20 circumstances which prevent voting absentee during the
21 period for regular absentee voting in person or by mail.

22 (c) Upon oral request, the official designated to supervise
23 and conduct absentee voting shall provide the voter with
24 the appropriate application for voting absentee in person,
25 as provided in this article. The voter shall complete and
26 sign the application in his or her own handwriting or, if the
27 voter is unable to complete the application because of
28 illiteracy or physical disability, the person assisting the
29 voter and witnessing the mark of the voter shall sign his or
30 her name in the space provided.

31 (d) Upon completion, the application is to be immedi-
32 ately returned to the official designated to supervise and
33 conduct absentee voting who shall determine:

34 (1) Whether the application has been completed as
35 required by law;

36 (2) Whether the applicant is duly registered to vote in the
37 precinct of his or her residence and, in a primary election,
38 is qualified to vote the ballot of the political party re-
39 quested; and

40 (3) Whether the applicant is authorized for the reasons
41 given in the application to vote an absentee ballot by
42 personal appearance during the special absentee voting
43 period at the time of the application.

44 (e) If the official designated to supervise and conduct
45 absentee voting determines the conditions provided in
46 subsection (d) of this section have not been met, or has
47 evidence that any of the information contained in the
48 application is not true, the clerk shall challenge the voter's
49 absentee ballot as provided in this article.

50 (f) The official designated to supervise and conduct
51 absentee voting shall provide each person voting an
52 absentee ballot in person the following items to be printed
53 as prescribed by the secretary of state:

54 (1) One of each type of official absentee ballot the voter
55 is eligible to vote, prepared according to law;

56 (2) For all punch card and paper ballot voting and for
57 optical scan ballots voted after election supplies are
58 delivered to the election supply commissioner, one enve-
59 lope, unsealed, which may have no marks except the
60 designation "Absent Voter's Ballot Envelope No. 1" and
61 printed instructions to the voter;

62 (3) For all punch card and paper ballot voting and for
63 optical scan ballots voted after election supplies are
64 delivered to the election supply commissioner, one enve-
65 lope, unsealed, designated "Absent Voter's Ballot Envelope
66 No. 2"; and

67 (4) For optical scan voting systems, ballots, a secrecy
68 sleeve and access to a ballot box secured by two locks with
69 keys kept by the president of the county commission and
70 the county clerk.

71 (g) The voter shall enter the voting booth alone and there
72 mark the ballot: *Provided*, That the voter may have
73 assistance in voting according to the provisions of section
74 four of this article. After the voter has voted the ballot or
75 ballots, the punch card and paper absentee voter shall: (1)
76 Place the ballot or ballots in envelope no. 1 and seal that
77 envelope; (2) place the sealed envelope no. 1 in envelope no.
78 2 and seal that envelope; (3) complete and sign the forms
79 on envelope no. 2; and (4) return that envelope to the
80 official designated to supervise and conduct the absentee
81 voting.

82 (h) Upon receipt of the sealed envelope, the official
83 designated to supervise and conduct the absentee voting
84 shall:

85 (1) Enter onto the envelope any other required informa-
86 tion;

87 (2) Enter the challenge, if any, to the ballot;

88 (3) Enter the required information into the permanent
89 record of persons applying for and voting an absentee
90 ballot in person; and

91 (4) Place the sealed envelope in a secure location in the
92 official's office, to remain until delivered to the polling
93 place or, in the case of a challenged ballot, to the board of
94 canvassers.

**§3-3-4. Assistance to voter in voting an absent voter's ballot by
personal appearance; penalties.**

1 (a) Any registered voter who requires assistance to vote
2 by reason of blindness, disability, advanced age or inabil-
3 ity to read and write may be given assistance by a person
4 of the voter's choice: *Provided*, That the assistance may
5 not be given by the voter's present or former employer or
6 agent of that employer, by the officer or agent of a labor
7 union of which the voter is a past or present member or by
8 a candidate on the ballot.

9 (b) Any voter who requests assistance in voting an absent
10 voter's ballot but who is determined by the official desig-
11 nated to supervise and conduct absentee voting not to be
12 qualified for assistance under the provisions of this section
13 and section thirty-four, article one of this chapter may vote
14 a challenged absent voter's ballot with the assistance of
15 any person authorized to render assistance pursuant to this
16 section. The official designated to supervise and conduct
17 absentee voting shall in this case challenge the absent
18 voter's ballot on the basis of his or her determination that
19 the voter is not qualified for assistance.

20 (c) Any one or more of the election commissioners or poll
21 clerks in the precinct to which an absent voter's ballot has
22 been sent may challenge the ballot on the ground that the
23 voter received assistance in voting it when in his or their
24 opinion: (1) The person who received the assistance in
25 voting the absent voter's ballot did not require assistance;
26 or (2) the person who provided the assistance in voting did

27 not make an affidavit as required by this section. The
28 election commissioner or poll clerk or commissioners or
29 poll clerks making a challenge shall enter the challenge
30 and reason for the challenge on the form and in the manner
31 prescribed or authorized by this article.

32 (d) Before entering the voting booth or compartment, the
33 person who intends to provide a voter assistance in voting
34 shall make an affidavit, the form of which is to be pre-
35 scribed by the secretary of state, that he or she will not in
36 any manner request or seek to persuade or induce the voter
37 to vote any particular ticket or for any particular candi-
38 date or for or against any public question and that he or
39 she will not keep or make any memorandum or entry of
40 anything occurring within the voting booth or compart-
41 ment and that he or she will not, directly or indirectly,
42 reveal to any person the name of any candidate voted for
43 by the voter or which ticket he or she had voted or how he
44 or she had voted on any public question or anything
45 occurring within the voting booth or compartment or
46 voting machine booth, except when required pursuant to
47 law to give testimony as to the matter in a judicial pro-
48 ceeding.

49 (e) In accordance with instructions issued by the secre-
50 tary of state, the official designated to supervise and
51 conduct absentee voting shall provide a form entitled "List
52 of Assisted Voters", prescribed by the secretary of state,
53 which list is to be divided into two parts. Part A is to be
54 entitled "Unchallenged Assisted Voters" and Part B is to
55 be entitled "Challenged Assisted Voters". Under Part A,
56 the official designated to supervise and conduct absentee
57 voting shall enter the name of each voter receiving unchal-
58 lenged assistance in voting an absent voter's ballot, the
59 address of the voter assisted, the nature of the disability
60 which qualified the voter for assistance in voting an absent
61 voter's ballot, the name of the person providing the voter
62 with assistance in voting an absent voter's ballot, the fact
63 that the person rendering the assistance in voting made

64 and subscribed to the oath required by this section and the
65 signature of the official designated to supervise and
66 conduct absentee voting certifying to the fact that he or
67 she had determined that the voter who received assistance
68 in voting an absent voter's ballot was qualified to receive
69 the assistance under the provisions of this section. Under
70 Part B, the official designated to supervise and conduct
71 absentee voting shall enter the name of each voter receiv-
72 ing challenged assistance in voting, the address of the voter
73 receiving challenged assistance, the reason for the chal-
74 lenge and the name of the person providing the challenged
75 voter with assistance in voting. At the close of the period
76 provided for voting an absent voter's ballot by personal
77 appearance, the official designated to supervise and
78 conduct absentee voting shall make and subscribe to an
79 oath on the list that the list is correct in all particulars; if
80 no voter has been assisted in voting an absent voter's ballot
81 as provided in this section, the official designated to
82 supervise and conduct absentee voting shall make and
83 subscribe to an oath of that fact on the list. The "List of
84 Assisted Voters" is to be available for public inspection in
85 the office of the official designated to supervise and
86 conduct absentee voting during regular business hours
87 throughout the period provided for voting an absent
88 voter's ballot by personal appearance and, unless otherwise
89 directed by the secretary of state, the official shall transmit
90 the list, together with the affidavits, applications and
91 absent voters' ballots, to the precincts on election day.

92 (f) Following the election, the affidavits required by this
93 section from persons providing assistance in voting,
94 together with the "List of Assisted Voters", are to be
95 returned by the election commissioners to the clerk of the
96 county commission, along with the election supplies,
97 records and returns, who shall make the oaths and list
98 available for public inspection and who shall preserve the
99 oaths and list for twenty-two months or, if under order of
100 the court, until their destruction or other disposition is
101 authorized or directed by the court.

102 (g) Any person making an affidavit required under the
103 provisions of this section who knowingly swears falsely in
104 the affidavit or any person who counsels or advises, aids or
105 abets another in the commission of false swearing under
106 this section is guilty of a misdemeanor and, upon conviction
107 thereof, shall be fined not more than one thousand
108 dollars or confined in the county or regional jail for a
109 period of not more than one year, or both.

110 (h) Any person who provides a voter assistance in voting
111 an absent voter's ballot in the office of the official designated
112 to supervise and conduct absentee voting who is not
113 qualified or permitted by this section to provide assistance
114 is guilty of a misdemeanor and, upon conviction thereof,
115 shall be fined not more than one thousand dollars or
116 imprisoned in the county or regional jail for a period of not
117 more than one year, or both.

118 (i) Any official designated to supervise and conduct
119 absentee voting, election commissioner or poll clerk who
120 authorizes or allows a voter to receive or to have received
121 unchallenged assistance in voting an absent voter's ballot
122 when the voter is known to the official designated to
123 supervise and conduct absentee voting or election commissioner
124 or poll clerk not to be or have been authorized by
125 the provisions of this section to receive or to have received
126 assistance in voting is guilty of a misdemeanor and, upon
127 conviction thereof, shall be fined not more than one
128 thousand dollars or imprisoned in the county or regional
129 jail for a period of not more than one year, or both.

130 (j) The term "physical disability" as used in this section
131 means blindness or a degree of blindness as will prevent
132 the voter from seeing the names on the ballot or amputation
133 of both hands or a disability of both hands that
134 neither can be used to make cross marks on the absent
135 voter's ballot.

§3-3-7. Delivery of absentee ballots to polling places.

1 (a) Except as otherwise provided in this article, in
2 counties in which the clerk of the county commission has
3 determined that the absentee ballots should be counted at
4 the precincts in which the absent voters are registered, the
5 absentee ballots of each precinct, together with the
6 applications for the absentee ballots, the affidavits made
7 in connection with assistance in voting, and any forms,
8 lists and records as may be designated by the secretary of
9 state, are to be delivered in a sealed carrier envelope to the
10 election commissioner of the precinct at the time he or she
11 picks up the official ballots and other election supplies as
12 provided in section twenty-four, article one of this chapter.

13 (b) For optical scan voting systems, all ballots voted
14 before the precinct supplies are delivered to the precinct
15 supply commissioner are to be deposited in the ballot box.
16 The ballots deposited in the ballot box shall be counted
17 and merged with the election day ballots at the counting
18 center on election night.

19 (c) Absentee ballots received after the election commis-
20 sioner has picked up the official ballots and other election
21 supplies for the precinct are to be delivered to the election
22 commissioner of the precinct who has been designated
23 pursuant to section twenty-four, article one of this chapter,
24 by the official designated to supervise and conduct absen-
25 tee voting in person, or by messenger, before the closing of
26 the polls, provided the ballots are received by the official
27 in time to make the delivery. Any ballots received by the
28 official after the time that delivery may reasonably be
29 made but within the time required as provided in subsec-
30 tion (g), section five of this article, are to be delivered to
31 the board of canvassers along with the challenged ballots.

§3-3-8. Disposition and counting of absent voters' ballots.

1 (a) All absentee ballots voted must be deposited in the
2 absentee ballot box. The ballots deposited in the ballot
3 box must be counted and merged with the election day
4 ballots at the counting center on election night or, at the

5 option of the clerk of the county commission, be delivered
6 for counting at the precinct in which the absent voter is
7 registered to vote, as provided in section seven of this
8 article.

9 (b) The county clerk shall appoint at least one team of
10 five absentee ballot counting commissioners. The composi-
11 tion of each team shall consist of the same combination of
12 election officials as provided for a counting board in
13 subdivision (3), subsection (a), section twenty-nine, article
14 one of this chapter. The absentee ballot counting commis-
15 sioners must count the absentee ballots at the counting
16 center as follows:

17 (1) Immediately after the closing of the polls on election
18 day the absentee ballot counting commissioners, in the
19 presence of each other, shall open the ballot box in which
20 are enclosed the absent voters' ballots.

21 (2) After the ballot box has been opened, each of the
22 absentee ballot counting commissioners shall examine each
23 of the mail-in sealed absent voter's ballot envelopes no. 2
24 contained therein, as well as the information contained
25 thereon, the application for such ballot, the affidavits,
26 records and lists, if any, made, prepared or authorized
27 under the provisions of this article which relate thereto
28 and make a decision as to each ballot whether a challenge
29 is or is not to be made to such ballot. The appropriate
30 form indicating the challenge shall be completed as to each
31 ballot challenged by one or more of the absentee ballot
32 counting commissioners. Each ballot challenged shall
33 remain sealed in absent voter's ballot envelope no. 2 and be
34 deposited in the box or envelope for challenged ballots.

35 (3) The absentee ballot counting commissioners shall
36 next determine whether any challenge has been made to
37 any absent voter's ballot by any registered voter in the
38 county under the provisions of section nine of this article.
39 Each such ballot challenged shall remain sealed in absent
40 voter's ballot envelope no. 2 and be deposited in the box or
41 envelope for challenged ballots.

42 (4) The absentee ballot counting commissioners, in the
43 presence of each other, shall then open, in a manner as not
44 to deface or destroy the information thereon, all of the
45 mail-in absent voter's ballot envelopes no. 2 which contain
46 ballots not challenged and remove therefrom the absent
47 voter's ballot envelopes no. 1. These envelopes shall then
48 be shuffled and intermingled.

49 (5) The absentee ballot counting commissioners, in the
50 presence of each other, shall next open all of the absent
51 voter's ballot envelopes no. 1 and remove the ballots
52 therefrom. The absentee ballot counting commissioners
53 who are poll clerks shall write their names on the back of
54 each of such ballots in the same manner as other ballots
55 are required to be endorsed by the poll clerks at precinct
56 voting. The absentee ballot counting commissioners who
57 are poll clerks shall then indicate with the letter "a" in the
58 appropriate place on the registration record the fact that
59 the voter had voted by absent voter's ballot in that election
60 and shall enter the absent voter's name on the pollbook.

61 (6) The absentee ballot counting commissioners shall
62 next count the mail-in and in-person absentee ballots and
63 enter the totals onto the precinct election records.

64 (7) The challenged ballots shall be deposited in a chal-
65 lenged ballot envelope and delivered to the board of
66 canvassers.

67 (c) Any election official who determines a person has
68 voted an absent voter's ballot and has also voted at the
69 polls on election day must report the fact to the prosecut-
70 ing attorney of the county in which the votes were cast.

**§3-3-11. Preparation, number and handling of absent voters'
ballots.**

1 (a) Absent voters' ballots are to be in all respects like
2 other ballots. Not less than seventy days before the date
3 on which any primary, general or special election is to be
4 held, unless a lesser number of days is provided for in any

5 specific election law in which case the lesser number of
6 days applies, the clerks of the circuit courts of the several
7 counties shall estimate and determine the number of
8 absent voters' ballots of all kinds which will be required in
9 their respective counties for that election. The ballots for
10 the election of all officers, or the ratification, acceptance
11 or rejection of any measure, proposition or other public
12 question to be voted on by the voters, are to be prepared
13 and printed under the direction of the board of ballot
14 commissioners constituted as provided in article one of this
15 chapter. The several county boards of ballot commission-
16 ers shall prepare and have printed, in the number they may
17 determine, absent voters' ballots that are to be printed
18 under their directions as provided in this chapter and those
19 ballots are to be delivered to the clerk of the circuit court
20 of the county not less than forty-two days before the day
21 of the election at which they are to be used. Before any
22 ballot is mailed or delivered, the clerk of the circuit court
23 shall affix his or her official seal and he or she and the
24 other members of the board of ballot commissioners shall
25 place their signatures near the lower left-hand corner on
26 the back of the ballot. The clerks of the circuit courts are
27 authorized to have their signatures affixed by a facsimile
28 printed on the back of absentee ballots, by a facsimile
29 signature stamp or by signing their original signatures. An
30 absent voter's ballot not containing the seal and signatures
31 shall be challenged. If an accurate accounting is made for
32 all ballots and applications in that precinct and no other
33 valid challenge exists against the voter, the ballot shall be
34 counted at the canvas.

35 (b) The official designated to supervise and conduct
36 absentee voting shall be primarily responsible for the
37 mailing, receiving, delivering and otherwise handling of all
38 absent voters' ballots. He or she shall keep a record, as
39 may be prescribed by the secretary of state, of all ballots so
40 delivered for the purpose of absentee voting, as well as all
41 ballots, if any, marked before him or her and shall deliver
42 to the commissioner of election a certificate stating the

43 number of ballots delivered or mailed to absent voters and
44 those marked before him or her, if any, and the names of
45 the voters to whom those ballots have been delivered or
46 mailed or by whom they have been marked, if marked
47 before him or her.

ARTICLE 4. VOTING MACHINES.

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

1 (a) The ballot commissioners of any county in which
2 voting machines are to be used in any election shall cause
3 to be printed for use in the election the ballot labels for the
4 voting machines and paper ballots for absentee voting,
5 voting by persons unable to use the voting machine and
6 challenged ballots, or if an electronic voting system or
7 direct recording election equipment is to be used in an
8 election, the ballot commissioners shall comply with
9 requirements of section eleven, article four-a of this
10 chapter. The labels shall be clearly printed in black ink on
11 clear white material of such size as will fit the ballot
12 frames. The paper ballots shall be printed in compliance
13 with the provisions of this chapter governing paper ballots.

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

27 (c) Each question to be voted on must be placed at the
28 end of the ballot and must be printed according to the

29 provisions of the laws and regulations governing the question.

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

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

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

§3-4-20. Recording and disposition of absent voters' ballots.

1 The recording and disposition of absent voters' ballots
2 shall be governed by the provisions of article three of this
3 chapter.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-3. Procedure for adopting electronic voting systems.

1 An electronic voting system that has been approved in
2 accordance with section eight of this article may be
3 adopted for use in general, primary and special elections in
4 any county by either of the following procedures and not
5 otherwise:

6 (1) By a majority of the members of the county commis-
7 sion voting to adopt the same at a special public meeting
8 called for the purpose of said adoption, with due notice
9 thereof published as a Class II-0 legal advertisement in
10 compliance with the provisions of article three, chapter
11 fifty-nine of this code and the publication area for such
12 publication shall be the county involved: *Provided*, That
13 such meeting shall be held not less than six months prior
14 to a general election or six months prior to a primary
15 election. If at such meeting such county commission shall
16 enter an order of its intention to adopt the use of an
17 electronic voting system, it shall thereafter forthwith cause
18 to be published a certified copy of such order as a Class II-
19 0 legal advertisement in compliance with the provisions of
20 article three, chapter fifty-nine of this code and the
21 publication area for such publication shall be the county
22 involved. The first publication of such order shall not be
23 less than twenty days after the entry of such order. Such
24 county commission shall not adopt the use of an electronic
25 voting system until eighty-five days after the entry of such
26 order of its intention to adopt the same. Promptly after the
27 expiration of eighty-five days after the entry of such order
28 of intention to adopt the use of an electronic voting system,
29 if no petition has theretofore been filed with such county
30 commission requesting a referendum on the question of
31 adoption of an electronic voting system as hereinafter

32 provided, such county commission shall enter a final order
33 adopting the electronic voting system and the electronic
34 voting system shall thereby be adopted.

35 If five percent or more of the registered voters of such
36 county shall sign a petition requesting that an electronic
37 voting system be not adopted for use in such county and
38 such petition be filed with the county commission of such
39 county within eighty-five days after the entry of such order
40 of intention to adopt the use of an electronic voting system,
41 such county commission shall submit to the voters of such
42 county at the next general or primary election, whichever
43 shall first occur, the question: "Shall an electronic voting
44 system be adopted in _____ County?" If this question
45 be answered in the affirmative by a majority of the voters
46 in such election upon the question, an electronic voting
47 system shall thereby be adopted. If such question shall not
48 be answered in the affirmative by such majority, the use of
49 an electronic voting system shall not be adopted.

50 (2) By the affirmative vote of a majority of the voters of
51 such county voting upon the question of the adoption of an
52 electronic voting system in such county. If five percent or
53 more of the registered voters of such county shall sign a
54 petition requesting the adoption of an electronic voting
55 system for use in such county and such petition be filed
56 with the county commission of such county, such county
57 commission shall submit to the voters of such county at the
58 next general or primary election the question: "Shall an
59 electronic voting system be adopted in _____
60 County?" If this question be answered in the affirmative
61 by a majority of the voters of such county voting upon the
62 question, an electronic voting system shall thereby be
63 adopted. If such question shall not be answered in the
64 affirmative by such majority, the use of an electronic
65 voting system shall not be adopted: *Provided*, That
66 nothing in this section shall be construed to affect or
67 invalidate the adoption of any electronic voting system by
68 any county in accordance with applicable law prior to the

69 effective date of this section: *Provided, however,* That the
70 amendments to this section adopted during the regular
71 session of the Legislature in the year two thousand two
72 apply to any county commission which is in the process of
73 adopting an electronic voting system on the effective date
74 of the amendments.

**§3-4A-19a. Form of ballots; requiring the signatures of poll
clerks; prohibiting the counting of votes cast on
ballots without signatures.**

1 (a) Where applicable, every ballot utilized during the
2 course of any electronic voting system election conducted
3 under the provisions of this article is to have two lines for
4 the signatures of the poll clerks. Both of the signature
5 lines are to be printed on a portion of the ballot where
6 votes are not recorded by perforation or marking, but
7 which portion is an actual part of the ballot deposited in
8 the ballot box after the voter has perforated or marked his
9 or her ballot and after the ballot stub has been removed.
10 Each of the two poll clerks shall sign his or her name on
11 one of the designated lines provided on each ballot before
12 any ballot is distributed to a voter.

13 (b) After a voter has signed the pollbook, as required in
14 section nineteen of this article, the two poll clerks shall
15 deliver a ballot to the voter, which ballot has been signed
16 by each of the two poll clerks as provided in this section:
17 *Provided,* That where an electronic voting system that
18 utilizes screens upon which votes may be recorded by
19 means of a stylus or by means of touch, an election com-
20 missioner shall accompany the voter to the voting device
21 and shall activate the device for voting.

22 (c) Any ballot which does not contain the proper signa-
23 tures shall be challenged. If an accurate accounting is
24 made for all ballots in the precinct in which the ballot was
25 voted and no other challenge exists against the voter, the
26 ballot shall be counted at the canvas.

§3-4A-21. Absent voter ballots; issuance, processing and tabulation.

1 (a) Absentee voters shall cast their votes on absent voter
2 ballots.

3 (b) If absentee voters are deemed eligible to vote in
4 person at the office of the official designated to supervise
5 and conduct absentee voting, in accordance with the
6 provisions of article three of this chapter, the official for
7 each county shall provide a vote recording device or other
8 means, as may be appropriate for votes recorded by
9 electronically sensible ink or pencil, or by means of a stylus
10 or by means of touch, for the use of the absentee voters.
11 Notwithstanding any provision of article three of this
12 chapter to the contrary, any voter who desires to vote by
13 absentee ballot in a county using an electronic voting
14 system with a screen upon which votes are recorded by
15 means of a stylus or by means of touch shall complete an
16 application prescribed by the secretary of state which is to
17 be processed in the manner otherwise prescribed by law,
18 except that the official designated to supervise and
19 conduct absentee voting shall deliver a copy of the applica-
20 tion to each polling place. No voter who votes in person by
21 absentee ballot may vote in person on the date of the
22 election.

23 (c) For all absentee voters considered eligible to vote an
24 absent voter's ballot by mail, in accordance with the
25 provisions of article three of this chapter, the official
26 designated to supervise and conduct absentee voting for
27 each county shall prepare and issue an absent voter ballot
28 packet consisting of the following:

29 (1) One official absent voter ballot;

30 (2) One punching tool for perforating or a device for
31 marking by electronically sensible pen or ink, as may be
32 appropriate;

33 (3) If a punching tool is to be utilized, one disposable
34 styrofoam block to be placed behind the ballot card for
35 voting purposes and to be discarded after use by the voter;

36 (4) One absent voter instruction ballot;

37 (5) One absent voter's ballot envelope no. 1, unsealed,
38 which may have no writing on it and which is to be
39 identical to the secrecy envelope used for placement of
40 ballots at the polls; and

41 (6) One absent voter's ballot envelope no. 2, marked with
42 the proper precinct number and providing a place on its
43 seal for the absent voter to affix his or her signature. The
44 envelope is also to contain the forms and instructions as
45 provided in section five, article three of this chapter
46 relating to the absentee voting of proper ballots.

47 (d) Upon receipt of an absent voter's ballot by mail, the
48 voter shall mark the ballot with the punch tool or marking
49 device, whichever is appropriate, and the voter may receive
50 assistance in voting his or her absent voter's ballot in
51 accordance with the provisions of section six, article three
52 of this chapter.

53 (e) After the voter has voted his or her absent voter's
54 ballot, he or she shall: (1) Enclose the ballot in absent
55 voter's ballot envelope no. 1, and seal that envelope; (2)
56 enclose sealed absent voter's ballot envelope no. 1 in
57 absent voter's ballot envelope no. 2; (3) complete and sign
58 the forms, if any, on absent voter's ballot envelope no. 2
59 according to the instructions on the envelope; and (4) mail,
60 postage prepaid, sealed absent voter's ballot envelope no.
61 2 to the official designated to supervise and conduct
62 absentee voting for the county in which he or she is
63 registered to vote, unless the voter has appeared in person,
64 in which event he or she shall hand deliver the sealed
65 absent voter's ballot envelope no. 2 to the official.

66 (f) Upon receipt of the sealed envelope, the official
67 designated to supervise and conduct absentee voting shall:

68 (1) Enter onto the envelope any information as may be
69 required of him or her according to the instructions on the
70 envelope; (2) enter his or her challenge, if any, to the absent
71 voter's ballot; (3) enter the required information into a
72 record of persons making application for and voting an
73 absent voter's ballot by personal appearance or by mail on
74 a form prescribed by the secretary of state; and (4) place
75 the sealed envelope in a secure location in his or her office,
76 there to remain until after the close of the polling place on
77 election day in accordance with the provisions of this
78 article or, in case of a challenged ballot, to the county
79 commission sitting as a board of canvassers.

80 (g) Notwithstanding any provision of article three of this
81 chapter to the contrary, no voter who has voted by absen-
82 tee ballot in accordance with the provisions of article three
83 of this chapter, or otherwise as provided by law, in a
84 county using an electronic voting system with screens upon
85 which votes are recorded by means of a stylus or by means
86 of touch may vote in person on the date of the election.

87 (h) The absentee ballot counting commissioners shall, at
88 the close of the polls, proceed to determine the legality of
89 the ballots as prescribed in article three of this chapter.
90 The absentee ballot counting commissioners shall then
91 open all of the absent voter's ballot envelopes no. 2 which
92 contain ballots not challenged and remove from the
93 envelopes the absent voter's ballot envelopes no. 1. These
94 ballot envelopes no. 1 are then to be shuffled and intermin-
95 gled. The absentee ballot counting commissioners, in the
96 presence of each other, shall next open all of the absent
97 voter's ballot envelopes no. 1 and remove the ballots from
98 the envelopes. The absentee ballot counting commissioners
99 who are poll clerks shall then affix their signatures to the
100 ballots as provided in section nineteen-a of this article.
101 The commissioners shall then insert each ballot into a
102 secrecy envelope identical to the secrecy envelopes used for
103 the placement of ballots of voters who are voting in person
104 at the polls and shall deposit the ballot in the ballot box.

105 The requirement that two poll clerks sign a ballot accord-
106 ing to this subsection is a mandatory duty and is not to be
107 construed as merely directory.

108 (i) In the course of an election contest, if it is established
109 that a ballot does not contain the two signatures required
110 by this section, the ballot is null, void and of no effect and
111 may not be counted. The requirement that a ballot not be
112 counted if it does not meet the requirements of this section
113 is mandatory and not to be construed as merely directory.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

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

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

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

22 (b) (1) For paper ballots, the heading of the ballot is to be
23 separated from the rest of the ballot by heavy lines and the
24 offices shall be arranged in columns with the following

25 headings, from left to right across the ballot: "National
26 Ticket", "State Ticket", "County Ticket" and, in a presi-
27 dential election year, "National Convention" or, in a
28 nonpresidential election year, "District Ticket". The
29 columns are to be separated by heavy lines. Within the
30 columns, the offices are to be arranged in the order pre-
31 scribed in section thirteen-a of this article.

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

40 (3) The title of each office is to be separated from preced-
41 ing offices or candidates by a line and is to be printed in
42 bold type no smaller than eight point. Below the office is
43 to be printed the number of the district, if any, the number
44 of the division, if any, and the words "Vote for _____"
45 with the number to be nominated or elected or "Vote For
46 Not More Than _____" in multicandidate elections. For
47 offices in which there are limitations relating to the
48 number of candidates which may be nominated, elected or
49 appointed to or hold office at one time from a political
50 subdivision within the district or county in which they are
51 elected, there is to be a clear explanation of the limitation,
52 as prescribed by the secretary of state, printed in bold type
53 immediately preceding the names of the candidates for
54 those offices on the ballot in every voting system. For
55 counties in which the number of county commissioners
56 exceeds three and the total number of members of the
57 county commission is equal to the number of magisterial
58 districts within the county, the office of county commission
59 is to be listed separately for each district to be filled with
60 the name of the magisterial district and the words "Vote
61 for One" printed below the name of the office.

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

68 (d) (1) The name of every candidate certified by the
69 secretary of state or the board of ballot commissioners is to
70 be printed in capital letters in no smaller than eight-point
71 type on the ballot for the appropriate precincts. Subject to
72 the rules promulgated by the secretary of state, the name
73 of each candidate is to appear in the form set out by the
74 candidate on the certificate of announcement, but in no
75 case may the name misrepresent the identity of the candi-
76 date nor may the name include any title, position, rank,
77 degree or nickname implying or inferring any status as a
78 member of a class or group or affiliation with any system
79 of belief.

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

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

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

97 (e) When an insufficient number of candidates has filed
98 for a party to make the number of nominations allowed for
99 the office or for the voters to elect sufficient members to
100 the board of education or to executive committees, the
101 vacant positions on the ballot shall be filled with the words
102 "No Candidate Filed": *Provided*, That in paper ballot
103 systems which allow for write-ins to be made directly on
104 the ballot, a blank line shall be placed in any vacant
105 position in the office of board of education or for election
106 to any party executive committee. A line shall separate
107 each candidate from every other candidate for the same
108 office. Notwithstanding any other provision of this code, if
109 there are multiple vacant positions on a ballot for one
110 office, the multiple vacant positions which would other-
111 wise be filled with the words "No Candidate Filed" may be
112 replaced with a brief detailed description, approved by the
113 secretary of state, indicating that there are no candidates
114 listed for the vacant positions.

115 (f) In presidential election years, the words "For election
116 in accordance with the plan adopted by the party and filed
117 with the secretary of state" is to be printed following the
118 names of all candidates for delegate to national conven-
119 tion.

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

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

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

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

144 (k) The face of sample paper ballots and sample ballot
145 labels are to be like other official ballots or ballot labels
146 except that the word "sample" is to be prominently printed
147 across the front of the ballot in a manner that ensures the
148 names of candidates are not obscured and the word
149 "sample" may be printed in red ink. No printing may be
150 placed on the back of the sample.

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 are to contain:

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

6 (2) The name chosen as the party name by each group of
7 citizens which has secured nomination for two or more
8 candidates by petition under the provisions of section
9 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 primary
12 election, nomination by petition or nomination by appoint-
13 ment to fill a vacancy on the ballot has been certified and
14 filed according to law and no others.

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

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

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

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

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

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

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

79 On paper ballots, the specific instructions are to be
80 placed below the office name of any partisan office where
81 more than one is to be elected and across the top of all
82 columns for that office before the names of any candidates.

83 On all other ballots and ballot labels, the specific instruc-
84 tions are to be placed above or to the side of the names of
85 the candidates as the voting system requires.

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

97 (d) The arrangement of names within each office for all
98 ballot systems is to be as follows:

99 (1) In elections for presidential electors, the names of the
100 candidates for president and vice president of each party
101 are to be placed beside a brace with a single voting posi-
102 tion, so that a vote for any presidential candidate is a vote
103 for the electors of the party for which the candidates were
104 named.

105 (2) The order of names of candidates for any office or
106 division for which more than one is to be elected is deter-
107 mined as prescribed in section thirteen-a, article five of
108 this chapter: *Provided*, That the drawing by lot is to be
109 conducted on the seventieth day next preceding the date of
110 the general election, beginning at 9:00 a.m.

111 (3) Except in voting machine systems, in any office where
112 more than one person is to be elected, the names of the
113 candidates for the office are to be staggered so that no two
114 candidates for that office appear directly opposite any
115 other candidate, as shown in the example below:

116		
117	For House of Delegates	For House of Delegates
118	First Delegate District	First Delegate District
119	(Vote For Not More Than Two)	(Vote For Not More Than Two)
120		
121	SUSAN B. ANTHONY	
122	City (County)	
123		
124		JOHN ADAMS
125		City (County)
126		
127	ABRAHAM LINCOLN	
128	City (County)	
129		
130		JAMES MONROE
131		City (County)
132		

133 (4) Each voting system is to provide a means for voters to
 134 vote for any person whose name does not appear on the
 135 ticket by writing it with pen or pencil or by using stamps,
 136 stickers, tapes, labels or other means of writing in the
 137 name of a candidate which does not interfere with the
 138 tabulation of the ballot.

139 (A) In paper ballot systems which allow for write-ins to
 140 be made directly on the ballot, a blank square and a blank
 141 line equal to the space which would be occupied by the
 142 name of the candidate is to be placed under the proper
 143 office for each vacancy in nomination and for an office for
 144 which more than one is to be elected, any vacancy is to
 145 appear after any other candidates for the office.

146 (B) In machine and electronically tabulated ballot
 147 systems in which write-in votes must be made in a place
 148 other than on the ballot label, if there is a vacancy in
 149 nomination leaving fewer candidates in any party than can
 150 be elected to that office, the words "No Candidate Nomi-
 151 nated" is to be printed in the space that would be occupied

152 by the name of the candidate and for an office for which
153 more than one is to be elected, any such vacancy is to
154 appear after any other candidates for the office. Notwith-
155 standing any other provision of this code, if there are
156 multiple vacant positions on a ballot for one office, the
157 multiple vacant positions which would otherwise be filled
158 with the words "No Candidate Filed" may be replaced
159 with a brief detailed description, approved by the secretary
160 of state, indicating that there are no candidates listed for
161 the vacant positions.

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

168 (e) Any constitutional amendment is to be placed follow-
169 ing all offices, followed by any other issue upon which the
170 voters are to cast a vote. The heading for each amendment
171 or issue is to be printed in large, bold type according to the
172 requirements of the resolution authorizing the election.

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

§3-6-4a. Filing requirements for write-in candidates.

1 Any eligible person who seeks to be elected by write-in
2 votes to an office, except delegate to national convention,
3 which is to be filled in a primary, general or special
4 election held under the provisions of this chapter shall file
5 a write-in candidate's certificate of announcement as
6 provided in this section. No certificate of announcement
7 may be accepted and no person may be certified as a write-

8 in candidate for a political party nomination for any office
9 or for election as delegate to national convention.

10 (a) The write-in candidate's certificate of announcement
11 shall be in a form prescribed by the secretary of state on
12 which the candidate shall make a sworn statement before
13 a notary public or other officer authorized to give oaths,
14 containing the following information:

15 (1) The name of the office sought and the district and
16 division, if any;

17 (2) The legal name of the candidate and the first and last
18 name by which the candidate may be identified in seeking
19 the office;

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

24 (4) A statement that the person filing the certificate of
25 announcement is a candidate for the office in good faith;
26 and

27 (5) The words "subscribed and sworn to before me this
28 _____ day of _____, ____" and a space for the
29 signature of the officer giving the oath.

30 (b) The certificate of announcement shall be filed with
31 the filing officer for the political division of the office as
32 prescribed in section seven, article five of this chapter.

33 (c) The certificate of announcement shall be filed with
34 and received by the proper filing officer as follows:

35 (1) Except as provided in subdivisions (2) and (3) of this
36 subsection, the certificate of announcement for any office
37 shall be received no later than the close of business on the
38 fourteenth day before the election at which the office is to
39 be filled;

40 (2) When a vacancy occurs in the nomination of candi-
41 dates for an office on the ballot resulting from the death of
42 the nominee or from the disqualification or removal of a
43 nominee from the ballot by a court of competent jurisdic-
44 tion not earlier than the twenty-first day nor later than the
45 fifth day before the general election, the certificate shall be
46 received no later than the close of business on the fifth day
47 before the election or the close of business on the day
48 following the occurrence of the vacancy, whichever is later;

49 (3) When a vacancy occurs in an elective office which
50 would not otherwise appear on the ballot in the election,
51 but which creates an unexpired term of one or more years
52 which, according to the provisions of this chapter, is to be
53 filled by election in the next ensuing election, and such
54 vacancy occurs no earlier than the twenty-first day and no
55 later than the fifth day before the general election, the
56 certificate shall be received no later than the close of
57 business on the fifth day before the election or the close of
58 business on the day following the occurrence of the
59 vacancy, whichever is later.

60 (d) Any eligible person who files a completed write-in
61 candidate's certificate of announcement with the proper
62 filing officer within the required time shall be certified by
63 that filing officer as an official write-in candidate:

64 (1) The secretary of state shall, immediately following
65 the filing deadline, post the names of all official write-in
66 candidates for offices on the ballot in more than one
67 county and certify the name of each official write-in
68 candidate to the clerks of the circuit court of the appropri-
69 ate counties.

70 (2) The clerk of the circuit court shall, immediately
71 following the filing deadline, post the names of all official
72 write-in candidates for offices on the ballot in one county
73 and certify and deliver to the election officials of the
74 appropriate precincts the names of all official write-in
75 candidates and the office sought by each for statewide,

76 district and county offices on the ballot in the precinct for
77 which valid write-in votes will be counted.

§3-6-6. Ballot counting procedures in paper ballot systems.

1 When the polls are closed in an election precinct where
2 only a single election board has served, the receiving board
3 shall perform all of the duties prescribed in this section.
4 When the polls are closed in an election precinct where two
5 election boards have served, both the receiving and
6 counting boards shall together conclude the counting of
7 the votes cast, the tabulating and summarizing of the
8 number of the votes cast, unite in certifying and attesting
9 to the returns of the election and join in making out the
10 certificates of the result of the election provided for in this
11 article. They shall not adjourn until the work is completed.

12 In all election precincts, as soon as the polls are closed
13 and the last voter has voted, the receiving board shall
14 proceed to ascertain the result of the election in the
15 following manner:

16 (a) In counties in which the clerk of the county commis-
17 sion has determined that the absentee ballots should be
18 counted at the precincts in which the absent voters are
19 registered, the receiving board must first process the
20 absentee ballots and deposit the ballots to be counted in
21 the ballot box. The receiving board shall then proceed as
22 provided in subsections (b) and (c) of this section. In
23 counties in which the absentee ballots are counted at the
24 central counting center, the receiving board shall proceed
25 as provided in subsections (b) and (c) of this section.

26 (b) The receiving board shall ascertain from the
27 pollbooks and record on the proper form the total number
28 of voters who have voted. The number of ballots chal-
29 lenged shall be counted and subtracted from the total,
30 which result should equal the number of ballots deposited
31 in the ballot box. The commissioners and clerks shall also

32 report, over their signatures, the number of ballots spoiled
33 and the number of ballots not voted.

34 (c) The procedure for counting ballots, whether per-
35 formed throughout the day by the counting board as
36 provided in section thirty-three, article one of this chapter
37 or after the close of the polls by the receiving board or by
38 the two boards together, shall be as follows:

39 (1) The ballot box shall be opened and all votes shall be
40 tallied in the presence of the entire election board;

41 (2) One of the commissioners shall take one ballot from
42 the box at a time and shall determine if the ballot is
43 properly signed by the two poll clerks of the receiving
44 board. If not properly signed, the ballot shall be placed in
45 an envelope for the purpose, without unfolding it. Any
46 ballot which does not contain the proper signatures shall
47 be challenged. If an accurate accounting is made for all
48 ballots in the precinct in which the ballot was voted and no
49 other challenge exists against the voter, the ballot shall be
50 counted at the canvas. If properly signed, the commis-
51 sioner shall hand the ballot to a team of commissioners of
52 opposite politics, who shall together read the votes marked
53 on the ballot for each office. Write-in votes for election for
54 any person other than an official write-in candidate shall
55 be disregarded. When a voter casts a straight ticket vote
56 and also casts a write-in vote for an office, the straight
57 ticket vote for that office shall be rejected whether or not
58 a vote can be counted for a write-in candidate;

59 (3) The commissioner responsible for removing the
60 ballots from the box shall keep a tally of the number of
61 ballots as they are removed and whenever the number shall
62 equal the number of voters entered on the pollbook minus
63 the number of challenged ballots, as determined according
64 to subsection (a) of this section, any other ballot found in
65 the ballot box shall be placed in the same envelope with
66 unsigned ballots not counted, without unfolding the same
67 or allowing anyone to examine or know the contents

68 thereof, and the number of excess ballots shall be recorded
69 on the envelope;

70 (4) Each poll clerk shall keep an accurate tally of the
71 votes cast by marking in ink on tally sheets, which shall be
72 provided for the purpose, so as to show the number of votes
73 received by each candidate for each office and for and
74 against each issue on the ballot; and

75 (5) When the reading of the votes is completed, the ballot
76 shall be immediately strung on a thread.

ARTICLE 7. CONTESTED ELECTIONS.

§3-7-6. County and district contests; notices; time.

1 In all cases of contested elections, the county commission
2 shall be the judge of the election, qualifications and
3 returns of their own members and of all county and district
4 officers: *Provided*, That a member of the county commis-
5 sion whose election is being contested may not participate
6 in judging the election, qualifications and returns.

7 A person intending to contest the election of another to
8 any county or district office, including judge of any court
9 or any office that shall hereafter be created to be filled by
10 the voters of the county or of any magisterial or other
11 district therein, shall, within ten days after the result of the
12 election is certified, give the contestee notice in writing of
13 such intention and a list of the votes he will dispute, with
14 the objections to each, and of the votes rejected for which
15 he will contend. If the contestant objects to the legality of
16 the election or the qualification of the person returned as
17 elected, the notice shall set forth the facts on which such
18 objection is founded. The person whose election is so
19 contested shall, within ten days after receiving such notice,
20 deliver to the contestant a like list of the votes he will
21 dispute, with the objections to each, and of the rejected
22 votes for which he will contend; and, if he has any objec-
23 tion to the qualification of the contestant, he shall specify
24 in writing the facts on which the objection is founded.

25 Each party shall append to his notice an affidavit that he
26 verily believes the matters and things set forth to be true.
27 If new facts be discovered by either party after he has
28 given notice as aforesaid, he may, within ten days after
29 such discovery, give an additional notice to his adversary,
30 with the specifications and affidavit prescribed in this
31 section.

32 The provisions of this section apply to all elections,
33 including municipal elections, except that the governing
34 body of the municipality is the judge of any contest of a
35 municipal election.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-4a. Termination of political committees.

1 (a) A political committee may terminate by filing a
2 written request, in accordance with the provisions of
3 section four of this article, and by stating in the request
4 that it will no longer receive any contributions or make
5 any disbursements and that it has no outstanding debts or
6 obligations. At such time, any excess funds of the commit-
7 tee may be transferred to a political committee established
8 by the same candidate pursuant to the provisions of section
9 four or five-e of this article.

10 (b) The provisions of this section may not be construed to
11 eliminate or limit the authority of the secretary of state, in
12 consultation with the state election commission, to estab-
13 lish procedures for: (1) The determination of insolvency
14 with respect to any political committee; (2) the orderly
15 liquidation of an insolvent political committee and the
16 orderly application of its assets for the reduction of
17 outstanding debts; and (3) the termination of an insolvent
18 political committee after such liquidation and application
19 of assets.

20 (c) Notwithstanding any other provision of this code, any
21 political committee which has been terminated within
22 three years prior to the effective date of the reenactment of

23 this section during the regular session of the Legislature in
24 the year two thousand two, pursuant to a written request
25 made in accordance with the provisions of section four of
26 this article, may file a written request and be authorized
27 by the secretary of state to reestablish the political com-
28 mittee. Any request to reestablish a political committee
29 pursuant to the provisions of this subsection must be filed
30 on or before the first day of July, two thousand two. The
31 provisions of this subsection may not be construed to
32 increase the maximum contribution authorized during an
33 election cycle, as provided in section twelve of this article.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPEN- SATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETI- TIONS GENERALLY; CONFLICT OF INTEREST.

PART VII. ELECTIONS AND PETITIONS GENERALLY.

§8-5-13. Integration of municipal elections with system of permanent registration.

1 , Notwithstanding any charter provision to the contrary,
2 it is the duty of each city by charter provision or each
3 municipality by ordinance to make provision for integrat-
4 ing the conduct of all municipal elections with the system
5 of "permanent registration of voters" as provided in article
6 two, chapter three of this code.

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

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within *is approved* this the *13th*
Day of *January*, 2002.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 2/7/02

Time 12:10P