WEST VIRGINIA LEGISLATURE
Regular Session, 2002

ENROLLED
Committee Substitute for
SENATE BILL NO. 196

(By Senator Wooton et al)

PASSED February 5, 2002

In Effect from Passage
ENROLLED

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.

(a) For the purpose of this article:

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

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

(3) The term "counting board" means those election officials charged with counting the ballots at the precinct
in counties using paper ballots and includes one team of
poll clerks, one team of election commissioners and one
additional commissioner;

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

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

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

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

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

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

(B) For precincts of five hundred to seven hundred
registered voters, one standard receiving board or, at the
discretion of the county commission, one expanded receiving board; and
(C) For precincts of more than seven hundred registered voters, one expanded receiving board;

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

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

(B) In a statewide primary or general election, one counting board is required for any precinct of more than four hundred registered voters and one counting board may be allowed, at the discretion of the county commission, for any precinct of at least two hundred but no more than four hundred registered voters; and

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

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

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

(e) For each primary, general or special election in the county, the county commission, and for each municipal election, the governing body of the municipality, may appoint one or two election official trainees for each precinct.
§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.

(a) For any primary, general or special election held throughout a county, poll clerks and election commissioners may be nominated as follows:

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

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

3. (3) Each county executive committee shall also nominate qualified persons as alternates for at least ten percent of the poll clerks and election commissioners to be appointed in the county and is authorized to nominate as many qualified persons as alternates as there are precincts in the county to be called upon to serve in the event any of the persons originally appointed fail to accept appointment or fail to appear for the required training or for the preparation or execution of their duties;

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

(b) For any municipal primary, general or special election, the poll clerks and election commissioners may be nominated as follows:
(1) In municipalities which have municipal executive committees for the two major political parties in the municipality, each committee may nominate election officials in the manner provided for the nomination of election officials by county executive committees in subsection (a) of this section;

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

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

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

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

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

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

(e) The appropriate governing body shall appoint the election officials for each designated election board no later than the forty-ninth day before the election as follows:
Those eligible persons whose nominations for poll clerk and election commissioner were timely filed by the executive committees and those additional persons selected to serve as an election commissioner are to be appointed;

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

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

(1) Those alternates nominated by the executive committees shall be appointed;

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

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

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

(h) Within seven days following appointment, the clerk of the county commission shall notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their appointment and include with the notice a response notice form for the appointed person to return
indicating whether or not he or she agrees to serve in the specified capacity in the election.

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

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

(1) The clerk may attempt to contact the person originally appointed, may assign an alternate nominated by the same political party as the person absent if one is available or, if no alternate is available, may appoint another eligible person;

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

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

(k) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county commission as provided in this section.
§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.

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

(b) The clerk of the county commission is authorized, upon verification that the precinct at which a handicapped person is registered to vote is not handicap accessible, to transfer that person's registration to the nearest polling place in the county which is handicap accessible. Requests by these persons for a transfer of registration shall be received by the county clerk no later than thirty days prior to the date of the election. Any handicapped person who has not made a request for a transfer of registration at least thirty days prior to the date of the election may vote a challenged ballot at a handicap accessible polling place in the county of his or her registration and, if during the canvass the county commission determines that the person had been registered in a precinct not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The handicapped person may vote in the precinct to which the registration was transferred only as long as the disability exists or the precinct from which the handicapped person was transferred remains inaccessible to the handicapped. To ensure confidentiality of the transferred ballot,
county clerk processing the ballot shall provide the voter
with an unmarked envelope and an outer envelope desig-
nated "challenged ballot/handicapped voter". After
validation of the ballot at the canvass, the outer envelope
shall be destroyed and the handicapped voter's ballot shall
be placed with other approved challenged ballots prior to
removal of the ballot from the unmarked envelope.

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

(d) It is the duty of a poll clerk, in the presence of the
other poll clerk, to indicate by a check mark inserted in the
appropriate place on the registration record of each voter
the fact that the voter voted in the election. In primary
elections the clerk shall also insert thereon a distinguishing
initial or initials of the political party for whose candidates
the voter voted. If a person is challenged at the polls, the
challenge shall be indicated by the poll clerks on the
registration record together with the name of the chal-
lenger. The subsequent removal of the challenge shall be
recorded on the registration record by the clerk of the
county commission.
(e)(1) No voter may receive any assistance in voting unless, by reason of blindness, disability, advanced age or inability to read and write, that voter is unable to vote without assistance. Any voter qualified to receive assistance in voting under the provisions of this section may:

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

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

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

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

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

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

(2) Any voter who requests assistance in voting but who is believed not to be qualified for such assistance under the provisions of this section shall nevertheless be permitted to vote a challenged ballot with the assistance of any person herein authorized to render assistance.
(3) Any one or more of the election commissioners or poll clerges in the precinct may challenge the ballot on the ground that the voter thereof received assistance in voting it when in his or their opinion that the person who received assistance in voting is not so illiterate, blind, disabled or of such advanced age as to have been unable to vote without assistance. The election commissioner or poll clerk or commissioners or poll clerks making the challenge shall enter the challenge and reason therefor on the form and in the manner prescribed or authorized by article three of this chapter.

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

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

(B) Shall sign a written oath or affirmation before assisting the voter on a form prescribed by the secretary of state stating that he or she will not override the actual preference of the voter being assisted, attempt to influence the voter's choice or mislead the voter into voting for someone other than the candidate of voter's choice. The person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation: Provided, That no person providing assistance to a voter is required to sign an oath or affirmation where the reason for requesting assistance is the voter's inability to vote without assistance because of
blindness as defined in section three, article fifteen, chapter five of this code and the inability to vote without assistance because of blindness is certified in writing by a physician of the voter's choice and is on file in the office of the clerk of the county commission.

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

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

(g) Following the election, the oaths or affirmations required by this section from those assisting voters, together with the "list of assisted voters", shall be returned by the election commissioners to the clerk of the county commission along with the election supplies, records and returns, who shall make the oaths, affirmations and list
(h) Any person making an oath or affirmation required under the provisions of this section who knowingly swears falsely or any person who counsels, advises, aids or abets another in the commission of false swearing under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county or regional jail for a period of not more than one year, or both fined and imprisoned.

(i) Any election commissioner or poll clerk who authorizes or provides unchallenged assistance to a voter when the voter is known to the election commissioner or poll clerk not to require assistance in voting is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in a state correctional facility for a period of not less than one year nor more than 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.

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

(b) Any eligible voter who desires to apply for voter registration in person at the office of the clerk of the
county commission shall complete a voter registration application on the prescribed form and shall sign the oath required on that application in the presence of the clerk of the county commission or his or her deputy. The applicant shall then present valid identification and proof of age, except that the clerk may waive the proof of age requirement if the applicant is clearly over the age of eighteen.

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

(d) Upon receipt of the completed registration application, the clerk shall either:

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

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

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

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

(1) Each active voter registration shall be entered in the precinct book or books for the county precinct in which the voter's residence is located and shall be filed alphabeti-
cally by name, alphabetically within categories, or by
numerical street address, as determined by the clerk of the
county commission for the effective administration of
registration and elections. No active voter registration
record shall be removed from the precinct registration
books unless the registration is lawfully transferred or
canceled pursuant to the provisions of this article.

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

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

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

(2) Upon request of the municipality, and if the clerk of
the county commission does not object, separate municipal
precinct books shall be maintained in cases where munici-
pal or ward boundaries divide county precincts and it is
impractical to use county precinct books or separate municipal sections of those precinct books. If the clerk of the county commission objects to the request of a municipality for separate municipal precinct books, the state election commission must determine whether the separate municipal precinct books should be maintained.

(3) No registration record may be removed from a municipal registration record unless the registration is lawfully transferred or canceled pursuant to the provisions of this article in both the county and the municipal registration records.

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

(d) Each county, so long as precinct registration books are maintained, shall maintain a duplicate record of every active and inactive voter registration in a county alphabetical file. The alphabetical file may be maintained on individual paper forms or, upon approval of the secretary of state of a qualified data storage program, may be maintained in digitized format. A qualified data storage program shall be required to contain the same information for each voter registration as the precinct books, shall be subject to proper security from unauthorized alteration and shall be regularly duplicated to backup data storage to 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.
Throughout the period of absentee voting in person, the official designated to supervise and conduct absentee voting shall make the following provisions for voting:

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

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

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

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

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

(C) If there is no suitable area for absentee voting within the office.
Any designated area is subject to the same requirements as the regular absentee voting area.

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

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

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

(b) Special absentee voting in person for persons eligible to vote an absentee ballot under the provisions of subsection (c), section one of this article is to be conducted during regular business hours in the office of the official designated to supervise and conduct absentee voting beginning on the forty-second day before the election and continuing until the first day when regular absentee voting in person begins. Any person seeking to vote absentee under this subsection is to first give an affidavit, on a form prescribed by the secretary of state, stating under oath the specific circumstances which prevent voting absentee during the 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;
(2) For all punch card and paper ballot voting and for optical scan ballots voted after election supplies are delivered to the election supply commissioner, one envelope, unsealed, which may have no marks except the designation “Absent Voter’s Ballot Envelope No. 1” and printed instructions to the voter;

(3) For all punch card and paper ballot voting and for optical scan ballots voted after election supplies are delivered to the election supply commissioner, one envelope, unsealed, designated “Absent Voter’s Ballot Envelope No. 2”; and

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

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

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

(1) Enter onto the envelope any other required information;

(2) Enter the challenge, if any, to the ballot;
(3) Enter the required information into the permanent record of persons applying for and voting an absentee ballot in person; and

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

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

(a) Any registered voter who requires assistance to vote by reason of blindness, disability, advanced age or inability to read and write may be given assistance by a person of the voter's choice: Provided, That the assistance may not be given by the voter's present or former employer or agent of that employer, by the officer or agent of a labor union of which the voter is a past or present member or by a candidate on the ballot.

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

(c) Any one or more of the election commissioners or poll clerks in the precinct to which an absent voter's ballot has been sent may challenge the ballot on the ground that the voter received assistance in voting it when in his or their opinion: (1) The person who received the assistance in voting the absent voter's ballot did not require assistance; or (2) the person who provided the assistance in voting did
not make an affidavit as required by this section. The
election commissioner or poll clerk or commissioners or
poll clerks making a challenge shall enter the challenge
and reason for the challenge on the form and in the manner
prescribed or authorized by this article.

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

(e) In accordance with instructions issued by the secre-
tary of state, the official designated to supervise and
conduct absentee voting shall provide a form entitled "List
of Assisted Voters", prescribed by the secretary of state,
which list is to be divided into two parts. Part A is to be
entitled "Unchallenged Assisted Voters" and Part B is to
be entitled "Challenged Assisted Voters". Under Part A,
the official designated to supervise and conduct absentee
voting shall enter the name of each voter receiving unchal-
gened assistance in voting an absent voter's ballot, the
address of the voter assisted, the nature of the disability
which qualified the voter for assistance in voting an absent
voter's ballot, the name of the person providing the voter
with assistance in voting an absent voter's ballot, the fact
that the person rendering the assistance in voting made
and subscribed to the oath required by this section and the signature of the official designated to supervise and conduct absentee voting certifying to the fact that he or she had determined that the voter who received assistance in voting an absent voter’s ballot was qualified to receive the assistance under the provisions of this section. Under Part B, the official designated to supervise and conduct absentee voting shall enter the name of each voter receiving challenged assistance in voting, the address of the voter receiving challenged assistance, the reason for the challenge and the name of the person providing the challenged voter with assistance in voting. At the close of the period provided for voting an absent voter’s ballot by personal appearance, the official designated to supervise and conduct absentee voting shall make and subscribe to an oath on the list that the list is correct in all particulars; if no voter has been assisted in voting an absent voter’s ballot as provided in this section, the official designated to supervise and conduct absentee voting shall make and subscribe to an oath of that fact on the list. The “List of Assisted Voters” is to be available for public inspection in the office of the official designated to supervise and conduct absentee voting during regular business hours throughout the period provided for voting an absent voter’s ballot by personal appearance and, unless otherwise directed by the secretary of state, the official shall transmit the list, together with the affidavits, applications and absent voters’ ballots, to the precincts on election day.

(f) Following the election, the affidavits required by this section from persons providing assistance in voting, together with the “List of Assisted Voters”, are to be returned by the election commissioners to the clerk of the county commission, along with the election supplies, records and returns, who shall make the oaths and list available for public inspection and who shall preserve the oaths and list for twenty-two months or, if under order of the court, until their destruction or other disposition is authorized or directed by the court.
(g) Any person making an affidavit required under the provisions of this section who knowingly swears falsely in the affidavit or any person who counsels or advises, aids or abets another in the commission of false swearing under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail for a period of not more than one year, or both.

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

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

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

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

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

(c) Absentee ballots received after the election commissioner has picked up the official ballots and other election supplies for the precinct are to be delivered to the election commissioner of the precinct who has been designated pursuant to section twenty-four, article one of this chapter, by the official designated to supervise and conduct absentee voting in person, or by messenger, before the closing of the polls, provided the ballots are received by the official in time to make the delivery. Any ballots received by the official after the time that delivery may reasonably be made but within the time required as provided in subsection (g), section five of this article, are to be delivered to the board of canvassers along with the challenged ballots.

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

(a) All absentee ballots voted must be deposited in the absentee ballot box. The ballots deposited in the ballot box must be counted and merged with the election day ballots at the counting center on election night or, at the
option of the clerk of the county commission, be delivered
for counting at the precinct in which the absent voter is
registered to vote, as provided in section seven of this
article.

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

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

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

(3) The absentee ballot counting commissioners shall
next determine whether any challenge has been made to
any absent voter's ballot by any registered voter in the
county under the provisions of section nine of this article.
Each such ballot challenged shall remain sealed in absent
voter's ballot envelope no. 2 and be deposited in the box or
envelope for challenged ballots.
(4) The absentee ballot counting commissioners, in the presence of each other, shall then open, in a manner as not to deface or destroy the information thereon, all of the mail-in absent voter's ballot envelopes no. 2 which contain ballots not challenged and remove therefrom the absent voter's ballot envelopes no. 1. These envelopes shall then be shuffled and intermingled.

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

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

(7) The challenged ballots shall be deposited in a challenged ballot envelope and delivered to the board of canvassers.

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

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

(a) Absent voters' ballots are to be in all respects like other ballots. Not less than seventy days before the date on which any primary, general or special election is to be held, unless a lesser number of days is provided for in any
specific election law in which case the lesser number of
days applies, the clerks of the circuit courts of the several
counties shall estimate and determine the number of
absent voters' ballots of all kinds which will be required in
their respective counties for that election. The ballots for
the election of all officers, or the ratification, acceptance
or rejection of any measure, proposition or other public
question to be voted on by the voters, are to be prepared
and printed under the direction of the board of ballot
commissioners constituted as provided in article one of this
chapter. The several county boards of ballot commissi-
ers shall prepare and have printed, in the number they may
determine, absent voters' ballots that are to be printed
under their directions as provided in this chapter and those
ballots are to be delivered to the clerk of the circuit court
of the county not less than forty-two days before the day
of the election at which they are to be used. Before any
ballot is mailed or delivered, the clerk of the circuit court
shall affix his or her official seal and he or she and the
other members of the board of ballot commissioners shall
place their signatures near the lower left-hand corner on
the back of the ballot. The clerks of the circuit courts are
authorized to have their signatures affixed by a facsimile
printed on the back of absentee ballots, by a facsimile
signature stamp or by signing their original signatures. An
absent voter's ballot not containing the seal and signatures
shall be challenged. If an accurate accounting is made for
all ballots and applications in that precinct and no other
valid challenge exists against the voter, the ballot shall be
counted at the canvas.

(b) The official designated to supervise and conduct
absentee voting shall be primarily responsible for the
mailing, receiving, delivering and otherwise handling of all
absent voters' ballots. He or she shall keep a record, as
may be prescribed by the secretary of state, of all ballots so
delivered for the purpose of absentee voting, as well as all
ballots, if any, marked before him or her and shall deliver
to the commissioner of election a certificate stating the
number of ballots delivered or mailed to absent voters and
those marked before him or her, if any, and the names of
the voters to whom those ballots have been delivered or
mailed or by whom they have been marked, if marked
before him or her.

ARTICLE 4. VOTING MACHINES.

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

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

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

(c) Each question to be voted on must be placed at the end of the ballot and must be printed according to the
provisions of the laws and regulations governing the question.

(d) The ballot labels printed must total in number one and one-half times the total number of corresponding voting machines to be used in the several precincts of the county in the election. All the labels must be delivered to the clerk of the circuit court at least twenty-eight days prior to the day of the election. The clerk of the circuit court shall determine the number of paper ballots needed for absentee voting and to supply the precincts for challenged ballots and ballots to be cast by persons unable to use the voting machine. All required paper ballots shall be delivered to the clerk of the circuit court at least forty-two days prior to the day of the election.

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

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

§3-4-20. Recording and disposition of absent voters' ballots.
The recording and disposition of absent voters' ballots shall be governed by the provisions of article three of this chapter.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

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

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

(1) By a majority of the members of the county commission voting to adopt the same at a special public meeting called for the purpose of said adoption, with due notice thereof published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the county involved: Provided, That such meeting shall be held not less than six months prior to a general election or six months prior to a primary election. If at such meeting such county commission shall enter an order of its intention to adopt the use of an electronic voting system, it shall thereafter forthwith cause to be published a certified copy of such order as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the county involved. The first publication of such order shall not be less than twenty days after the entry of such order. Such county commission shall not adopt the use of an electronic voting system until eighty-five days after the entry of such order of its intention to adopt the same. Promptly after the expiration of eighty-five days after the entry of such order of intention to adopt the use of an electronic voting system, if no petition has theretofore been filed with such county commission requesting a referendum on the question of adoption of an electronic voting system as hereinafter
provided, such county commission shall enter a final order
adopting the electronic voting system and the electronic
ing voting system shall thereby be adopted.

If five percent or more of the registered voters of such
county shall sign a petition requesting that an electronic
voting system be not adopted for use in such county and
such petition be filed with the county commission of such
county within eighty-five days after the entry of such order
of intention to adopt the use of an electronic voting system,
such county commission shall submit to the voters of such
county at the next general or primary election, whichever
shall first occur, the question: "Shall an electronic voting
system be adopted in _______ County?" If this question
be answered in the affirmative by a majority of the voters
in such election upon the question, an electronic voting
system shall thereby be adopted. If such question shall not
be answered in the affirmative by such majority, the use of
an electronic voting system shall not be adopted.

(2) By the affirmative vote of a majority of the voters of
such county voting upon the question of the adoption of an
electronic voting system in such county. If five percent or
more of the registered voters of such county shall sign a
petition requesting the adoption of an electronic voting
system for use in such county and such petition be filed
with the county commission of such county, such county
commission shall submit to the voters of such county at the
next general or primary election the question: "Shall an
electronic voting system be adopted in _______ County?" If this question be answered in the affirmative
by a majority of the voters of such county voting upon the
question, an electronic voting system shall thereby be
adopted. If such question shall not be answered in the
affirmative by such majority, the use of an electronic
ing voting system shall not be adopted: Provided, That
nothing in this section shall be construed to affect or
invalidate the adoption of any electronic voting system by
any county in accordance with applicable law prior to the
Provided, however, That the amendments to this section adopted during the regular session of the Legislature in the year two thousand two apply to any county commission which is in the process of adopting an electronic voting system on the effective date 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.

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

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

(c) Any ballot which does not contain the proper signatures shall be challenged. If an accurate accounting is made for all ballots in the precinct in which the ballot was voted and no other challenge exists against the voter, the ballot shall be counted at the canvas.
§3-4A-21. Absent voter ballots; issuance, processing and tabulation.

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

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

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

(1) One official absent voter ballot;

(2) One punching tool for perforating or a device for marking by electronically sensible pen or ink, as may be appropriate;
(3) If a punching tool is to be utilized, one disposable styrofoam block to be placed behind the ballot card for voting purposes and to be discarded after use by the voter;

(4) One absent voter instruction ballot;

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

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

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

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

(f) Upon receipt of the sealed envelope, the official designated to supervise and conduct absentee voting shall:
(1) Enter onto the envelope any information as may be required of him or her according to the instructions on the envelope; (2) enter his or her challenge, if any, to the absent voter's ballot; (3) enter the required information into a record of persons making application for and voting an absent voter's ballot by personal appearance or by mail on a form prescribed by the secretary of state; and (4) place the sealed envelope in a secure location in his or her office, there to remain until after the close of the polling place on election day in accordance with the provisions of this article or, in case of a challenged ballot, to the county commission sitting as a board of canvassers.

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

(h) The absentee ballot counting commissioners shall, at the close of the polls, proceed to determine the legality of the ballots as prescribed in article three of this chapter. The absentee ballot counting commissioners shall then open all of the absent voter's ballot envelopes no. 2 which contain ballots not challenged and remove from the envelopes the absent voter's ballot envelopes no. 1. These ballot envelopes no. 1 are then to be shuffled and intermingled. The absentee ballot counting commissioners, in the presence of each other, shall next open all of the absent voter's ballot envelopes no. 1 and remove the ballots from the envelopes. The absentee ballot counting commissioners who are poll clerks shall then affix their signatures to the ballots as provided in section nineteen-a of this article. The commissioners shall then insert each ballot into a secrecy envelope identical to the secrecy envelopes used for the placement of ballots of voters who are voting in person at the polls and shall deposit the ballot in the ballot box.
The requirement that two poll clerks sign a ballot according to this subsection is a mandatory duty and is not to be construed as merely directory.

(i) In the course of an election contest, if it is established that a ballot does not contain the two signatures required by this section, the ballot is null, void and of no effect and may not be counted. The requirement that a ballot not be counted if it does not meet the requirements of this section 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.

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

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

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

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

(3) The title of each office is to be separated from preceding offices or candidates by a line and is to be printed in bold type no smaller than eight point. Below the office is to be printed the number of the district, if any, the number of the division, if any, and the words "Vote for ____" with the number to be nominated or elected or "Vote For Not More Than ____" in multicandidate elections. For offices in which there are limitations relating to the number of candidates which may be nominated, elected or appointed to or hold office at one time from a political subdivision within the district or county in which they are elected, there is to be a clear explanation of the limitation, as prescribed by the secretary of state, printed in bold type immediately preceding the names of the candidates for those offices on the ballot in every voting system. For counties in which the number of county commissioners exceeds three and the total number of members of the county commission is equal to the number of magisterial districts within the county, the office of county commission is to be listed separately for each district to be filled with the name of the magisterial district and the words "Vote for One" printed below the name of the office.
(c) The location for indicating the voter's choices on the ballot is to be clearly shown. For paper ballots, other than those tabulated electronically, the official primary ballot is to contain a square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names.

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

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

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

(4) If the number of candidates for an office exceeds the space available on a column or ballot label page and requires that candidates for a single office be separated, to the extent possible, the number of candidates for the office on separate columns or pages are to be nearly equal and clear instructions given the voter that the candidates for the office are continued on the following column or page.
(e) When an insufficient number of candidates has filed for a party to make the number of nominations allowed for the office or for the voters to elect sufficient members to the board of education or to executive committees, the vacant positions on the ballot shall be filled with the words "No Candidate Filed": Provided, That in paper ballot systems which allow for write-ins to be made directly on the ballot, a blank line shall be placed in any vacant position in the office of board of education or for election to any party executive committee. A line shall separate each candidate from every other candidate for the same office. Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words "No Candidate Filed" may be replaced with a brief detailed description, approved by the secretary of state, indicating that there are no candidates listed for the vacant positions.

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

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

(h) Electronically tabulated ballots and ballot cards are to contain perforated tabs at the top of the ballots and are to be printed with unique sequential numbers from one to the highest number representing the total number of ballots or ballot cards printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth of an inch wide, and the ballot is to be trimmed to within one-half inch of that border.
On the back of every official ballot or ballot card the words "Official Ballot" with the name of the county and the date of the election are to be printed. Beneath the date of the election there are to be two blank lines followed by the words "Poll Clerks".

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

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

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

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

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

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

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

(3) The names of every candidate for any office to be voted for at the election whose nomination in the primary election, nomination by petition or nomination by appointment to fill a vacancy on the ballot has been certified and filed according to law and no others.
(b) The provisions of subdivision (3), subsection (b); subsection (c); subdivisions (1) and (2), subsection (d); and subsections (g), (h), (i), (j) and (k), section thirteen of article five pertaining to the preparation and form of primary election ballots shall likewise apply to general election ballots.

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

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

(3) The party whose candidate for president received the highest number of votes at the last preceding presidential election is to be placed in the left, or first column, row or page, as is appropriate to the voting system. The party which received the second highest vote is to be next and so on. Any groups or third parties which did not have a candidate for president on the ballot in the previous presidential election are to be placed in the sequence in which the final certificates of nomination by petition were filed.
(4) (A) Except for lever machine ballot labels, the following general instructions for straight party voters are to be printed in no smaller than eight-point bold type: "IF YOU MARKED A STRAIGHT TICKET: When you mark any individual candidate in a different party, that vote will override your straight party vote for that office. When you mark any individual candidate in a different party for an office where more than one will be elected, YOU MUST MARK EACH OF YOUR CHOICES FOR THAT OFFICE because your straight ticket vote will not be counted for that office". The last sentence of the instructions may not be included on any ballot which does not contain any office or division where more than one candidate will be elected.

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

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

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

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

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

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

(3) Except in voting machinesystems, in any office where more than one person is to be elected, the names of the candidates for the office are to be staggered so that no two candidates for that office appear directly opposite any other candidate, as shown in the example below:
For House of Delegates
First Delegate District
(Vote For Not More Than Two)

SUSAN B. ANTHONY
City (County)

JOHN ADAMS
City (County)

ABRAHAM LINCOLN
City (County)

JAMES MONROE
City (County)

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

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

(B) In machine and electronically tabulated ballot systems in which write-in votes must be made in a place other than on the ballot label, if there is a vacancy in nomination leaving fewer candidates in any party than can be elected to that office, the words “No Candidate Nominated” is to be printed in the space that would be occupied
§3-6-4a. Filing requirements for write-in candidates.

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

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

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

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

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

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

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

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

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

(1) Except as provided in subdivisions (2) and (3) of this subsection, the certificate of announcement for any office shall be received no later than the close of business on the fourteenth day before the election at which the office is to be filled;
(2) When a vacancy occurs in the nomination of candidates for an office on the ballot resulting from the death of the nominee or from the disqualification or removal of a nominee from the ballot by a court of competent jurisdiction not earlier than the twenty-first day nor later than the fifth day before the general election, the certificate shall be received no later than the close of business on the fifth day before the election or the close of business on the day following the occurrence of the vacancy, whichever is later;

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

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

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

(2) The clerk of the circuit court shall, immediately following the filing deadline, post the names of all official write-in candidates for offices on the ballot in one county and certify and deliver to the election officials of the appropriate precincts the names of all official write-in candidates and the office sought by each for statewide,
district and county offices on the ballot in the precinct for which valid write-in votes will be counted.

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

When the polls are closed in an election precinct where only a single election board has served, the receiving board shall perform all of the duties prescribed in this section.

When the polls are closed in an election precinct where two election boards have served, both the receiving and counting boards shall together conclude the counting of the votes cast, the tabulating and summarizing of the number of the votes cast, unite in certifying and attesting to the returns of the election and join in making out the certificates of the result of the election provided for in this article. They shall not adjourn until the work is completed.

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

(a) In counties in which the clerk of the county commission has determined that the absentee ballots should be counted at the precincts in which the absent voters are registered, the receiving board must first process the absentee ballots and deposit the ballots to be counted in the ballot box. The receiving board shall then proceed as provided in subsections (b) and (c) of this section. In counties in which the absentee ballots are counted at the central counting center, the receiving board shall proceed as provided in subsections (b) and (c) of this section.

(b) The receiving board shall ascertain from the pollbooks and record on the proper form the total number of voters who have voted. The number of ballots challenged shall be counted and subtracted from the total, which result should equal the number of ballots deposited in the ballot box. The commissioners and clerks shall also
report, over their signatures, the number of ballots spoiled
and the number of ballots not voted.

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

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

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

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

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

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

ARTICLE 7. CONTESTED ELECTIONS.

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

In all cases of contested elections, the county commission shall be the judge of the election, qualifications and returns of their own members and of all county and district officers. Provided, That a member of the county commission whose election is being contested may not participate in judging the election, qualifications and returns.

A person intending to contest the election of another to any county or district office, including judge of any court or any office that shall hereafter be created to be filled by the voters of the county or of any magisterial or other district therein, shall, within ten days after the result of the election is certified, give the contestee notice in writing of such intention and a list of the votes he will dispute, with the objections to each, and of the votes rejected for which he will contend. If the contestant objects to the legality of the election or the qualification of the person returned as elected, the notice shall set forth the facts on which such objection is founded. The person whose election is so contested shall, within ten days after receiving such notice, deliver to the contestant a like list of the votes he will dispute, with the objections to each, and of the rejected votes for which he will contend; and, if he has any objection to the qualification of the contestant, he shall specify in writing the facts on which the objection is founded.
Each party shall append to his notice an affidavit that he verily believes the matters and things set forth to be true. If new facts be discovered by either party after he has given notice as aforesaid, he may, within ten days after such discovery, give an additional notice to his adversary, with the specifications and affidavit prescribed in this section.

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

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

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

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

(b) The provisions of this section may not be construed to eliminate or limit the authority of the secretary of state, in consultation with the state election commission, to establish procedures for: (1) The determination of insolvency with respect to any political committee; (2) the orderly liquidation of an insolvent political committee and the orderly application of its assets for the reduction of outstanding debts; and (3) the termination of an insolvent political committee after such liquidation and application of assets.

(c) Notwithstanding any other provision of this code, any political committee which has been terminated within three years prior to the effective date of the reenactment of
this section during the regular session of the Legislature in
the year two thousand two, pursuant to a written request
made in accordance with the provisions of section four of
this article, may file a written request and be authorized
by the secretary of state to reestablish the political com-
mittee. Any request to reestablish a political committee
pursuant to the provisions of this subsection must be filed
on or before the first day of July, two thousand two. The
provisions of this subsection may not be construed to
increase the maximum contribution authorized during an
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.

Notwithstanding any charter provision to the contrary,
it is the duty of each city by charter provision or each
municipality by ordinance to make provision for integrat-
ing the conduct of all municipal elections with the system
of "permanent registration of voters" as provided in article
two, chapter three of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within bill approved this the 13th Day of ____________, 2002.

Governor
PRESENTED TO THE
GOVERNOR

Date 2/7/02

Time 12:10 P.M.