WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED

SENATE BILL NO. 648

(By Senator Oliverio, et al)

PASSED March 2, 2003

In Effect 90 days from Passage
AN ACT to repeal section forty, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section twenty, article two of said chapter; to repeal section twenty-one, article four-a of said chapter; to repeal section twenty-one, article nine of said chapter; to amend and reenact sections seven, nine, twenty, twenty-one, twenty-four, twenty-five, twenty-eight, twenty-nine, thirty, thirty-four, thirty-nine, forty-one, forty-four and forty-five, article one of said chapter; to further amend said article by adding thereto three new sections, designated sections forty-eight, forty-nine and fifty; to amend and reenact sections two, three, five, seven, ten, thirteen, nineteen and thirty, article two of said chapter; to further amend said article by adding thereto a new section, designated section four-a; to amend and reenact sections one, two, two-a, three, five, five-c, seven, eight, ten and eleven, article three of said chapter; to amend and reenact sections ten and twenty-three,
article four of said chapter; to amend and reenact sections nine, nineteen, twenty-two, twenty-four-a and twenty-seven, article four-a of said chapter; to amend and reenact sections ten, thirteen, fifteen and nineteen, article five of said chapter; to amend and reenact sections three, four-a, five, six, seven and nine, article six of said chapter; to amend and reenact sections one and four, article seven of said chapter; to amend and reenact sections two, four, five and twelve, article eight of said chapter; to amend and reenact sections seven and eight, article ten of said chapter; and to amend and reenact section two, article six, chapter eight of said code, all relating to elections generally; requiring written notice to registered voters if precinct is changed; clarifying how members of the state executive committees are elected and providing for additional members; specifying the information to be on the general information cards; providing instruction on casting a provisional ballot; requiring posting of names of official write-in candidates; requiring all information available to voters on election day to be available during the early in-person voting period; requiring the circuit clerk to transfer absentee ballots to the clerk of the county commission where clerk of the county commission is responsible for absentee voting; authorizing poll clerks to pick up election supplies; authorizing reimbursement for county employees who deliver election supplies; prohibiting election officials from also being official write-in candidates; making expanded receiving boards optional; clarifying that alternate election officials be paid for attending training; changing challenged ballot to provisional ballot throughout; clarifying that the clerk of the county commission may use election records and returns to update voter registration records; eliminating the requirement for the immediate arrest of a person accused of voting illegally; establishing procedures for taking and securing affidavits regarding illegal voting; providing for the secured affidavits to be given to the prosecuting attorney; establishing procedures for challenging ballots and voting a provisional ballot; requiring that the secretary of state establish a system to allow provisional voters to learn whether or not their vote was
counted and why; requiring the circuit court to decide proceedings to compel performance of election duties within fifteen days; establishing a state election fund; setting new standards for voting systems; providing for state administrative complaint procedures for election law violations; authorizing the secretary of state to establish and maintain a statewide voter registration list; providing for stricter identification procedures for voter registration; clarifying when seventeen-year-olds may vote in municipal elections; providing that voter registration services will be provided whenever the office of the clerk of the county commission is open for business; clarifying that the secretary of state must periodically review and revise the rule relating to voter registration; clarifying that voter registration lists or data files may not be used or sold for commercial or charitable solicitations or advertising; changing regular absentee voting to early in-person voting; allowing voters who have resided in a nursing home for less than thirty days to vote by an emergency absentee ballot; clarifying that absentee ballots require a mail-in absentee ballot application; authorizing two representatives to assist with absentee voting and establishing qualifications; expanding the early in-person voting period to twenty days; eliminating voting on Monday before a Tuesday election and adding voting on the two Saturdays prior to the election; requiring notice to voters that Monday voting is no longer available; clarifying procedures for, and materials required for, early in-person voting; authorizing representatives to sign the back of mail-in ballots; requiring proper supplies be sent to mail-in absentee voters; establishing measures for securing mail-in absentee ballots; providing that the emergency absentee ballot commissioners must sign an oath; authorizing counties that use paper ballots to begin counting absentee ballots at nine o'clock the morning of election day; removing certain requirements for challenging absentee ballots; removing language that require ballot commissioner's signatures on absentee ballots; requiring that all electronic voting system materials be retained twenty-two months; providing that a person who assists voters casting their ballots cannot be a
candidate on the ballot or an official write-in candidate; removing the requirement that write-in votes be indicated by punching out write-in voting position on a punch card ballot in addition to entering the candidate's name; providing that the publication of sample ballots will be made not more than twenty-six nor less than twenty days prior to the primary and general elections; requiring numbers and perforated stubs on paper ballots; clarifying the requirements for an executive committee to call a meeting to fill vacancies on a ballot; allowing issues of candidate eligibility to be brought before the election commission; requiring the certificate of announcement for a write-in candidate be received by the close of business the eighteenth day prior to the election; requiring contests for state offices, legislative seats and judgeships to be filed within ten days of the certification of the election; removing the requirement that political committees advocating for or against an issue file financial statements; excluding federal political action committees from filing with the state; allowing a change of treasurer of a campaign committee by filing a written statement; requiring that candidates in a primary election file financial statements on the last Saturday in March or within six days thereafter; requiring that candidates in a general election file financial statement on the first Saturday in September or within six days thereafter; eliminating requirement that financial reports be notarized and requiring them to be sworn; allowing corporations to participate in nonpartisan registration and get-out-the-vote campaigns; prohibiting anonymous radio or television advertisements advocating the election or defeat of candidates; clarifying how a vacancy in the office of county commissioner or clerk of the county commission is to be filled; removing requirement to fill certain vacancies by election if the unexpired term is greater than one year; removing inconsistent time frames for holding annexation election; and clarifying that a majority of votes in the municipality and a majority of votes in the territory to be annexed determine the outcome of annexation elections.

Be it enacted by the Legislature of West Virginia:
That section forty, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twenty, article two of said chapter be repealed; that section twenty-one, article four-a of said chapter be repealed; that section twenty-one, article nine of said chapter be repealed; that sections seven, nine, twenty, twenty-one, twenty-four, twenty-five, twenty-eight, twenty-nine, thirty, thirty-four, thirty-nine, forty-one, forty-four and forty-five, article one of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections forty-eight, forty-nine and fifty; that sections two, three, five, seven, ten, thirteen, nineteen and thirty, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section four-a; that sections one, two, two-a, three, five, five-c, seven, eight, ten and eleven, article three of said chapter be amended and reenacted; that sections ten and twenty-three, article four of said chapter be amended and reenacted; that sections nine, nineteen, twenty-two, twenty-four-a and twenty-seven, article four-a of said chapter be amended and reenacted; that sections ten and thirteen, fifteen and nineteen, article five of said chapter be amended and reenacted; that sections three, four-a, five, six, seven and nine, article six of said chapter be amended and reenacted; that sections one and four, article seven of said chapter be amended and reenacted; that sections two, four, five and twelve, article eight of said chapter be amended and reenacted; that sections seven and eight, article ten of said chapter be amended and reenacted; and that section two, article six, chapter eight of said code be amended and reenacted, all to read as follows:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-7. Precinct changes; procedure; precinct record.

1 (a) Subject to the provisions and limitations of section five of this article, the county commission of any county may change the boundaries of any precinct within the
county, or divide any precinct into two or more precincts, or consolidate two or more precincts into one, or change the location of any polling place whenever the public convenience may require it.

(b) No order effecting the change, division or consolidation shall be made by the county commission within ninety days prior to an election nor without giving notice at least one month before the change, division or consolidation by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county in which the precinct or precincts are located. The county commission shall also, within fifteen days after the date of the order, publish the order in the manner required for publication of the notice.

(c) The county commission shall also, before the next succeeding election, cause the voters in the several precincts affected by the order to be duly registered in the proper precinct or precincts and shall mail written notification to all registered voters affected by the change.

(d) The county commission shall keep in a well-bound book, marked “election precinct record”, a complete record of all their proceedings hereunder and of every order made creating a precinct or precincts or establishing a place of voting therein. The “election precinct record” shall be kept by the county commission clerk in his or her office and shall, at all reasonable hours, when not actually in use by the county commission, be open to inspection by any citizen of the county.

(e) When the county commission establishes a polling place at a location other than the location used for holding the preceding primary, general or special election in that precinct, the commission shall cause a notice to be posted on election day on the door of the previous polling place describing the location of the newly established polling place.
place and shall mail written notification to all registered voters affected by the change.

(f) If for any reason the election cannot be held at the designated polling place in a precinct and no provision has been made by the county commission for holding the election at another place, the commissioners of election for that precinct may hold the election at the nearest place which they can secure for the purpose. They shall make known by proclamation to voters present at the time for opening the polls, and by posting a notice at or near the entrance of the first named polling place, the location at which the election will be held. The county commission shall establish another place of voting for that precinct as soon thereafter as practicable.

(g) Notwithstanding any provision herein to the contrary, in the case of an emergency, the county commission may make the precinct change no later than sixty days prior to an election in accordance with the requirements herein with the approval of the secretary of state. A change, if made however, shall not cause any voter to be moved to a different district.

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

Every fourth year at the primary election, the voters of each political party in each senatorial district shall elect four members consisting of two male members and two female members of the state executive committee of the party. In senatorial districts containing two or more counties, not more than two elected committee members shall be residents of the same county: Provided, That at each election the votes shall be tallied from highest to lowest without regard to gender or county of residence. The two candidates with the highest votes shall be elected first and the other candidates shall be qualified based on vote tallies, gender and county of residence. The committee, when convened and organized as herein provided, shall appoint three additional members of the committee
from the state at large which shall constitute the entire
ing voting membership of the state executive committee:
Provided, however, That if it chooses to do so, the commit-
tee may by motion or resolution, and in accordance with
party rules, may expand the voting membership of the
committee. When senatorial districts are realigned
following a decennial census, members of the state execu-
tive committee previously elected or appointed shall
continue in office until the expiration of their terms.
Appointments made to fill vacancies on the committee
until the next election of executive committee members
shall be selected from the previously established districts.
At the first election of executive committee members
following the realignment of senatorial districts, members
shall be elected from the newly established districts.
(b) At the primary election, the voters of each political
party in each county shall elect one male and one female
member of the party's executive committee of the congres-
sional district, of the senatorial district and of the delegate
district in which the county is situated, if the county is
situates in a multicounty senatorial or delegate district.
When districts are realigned following a decennial census,
members of an executive committee previously elected in
a county to represent that county in a congressional or
multicounty senatorial or delegate district executive
committee shall continue to represent that county in the
appropriate newly constituted multicounty district until
the expiration of their terms: Provided, That the county
executive committee of the political party shall determine
which previously elected members will represent the
county if the number of multicounty senatorial or delegate
districts in the county is decreased; and shall appoint
members to complete the remainder of the term if the
number of districts is increased.
(c) At the same time the voters of the county in each
magisterial district or executive committee district, as the
case may be, shall elect one male and one female member
of the party's county executive committee except that in counties having three executive committee districts, there shall be elected two male and two female members of the party's executive committee from each magisterial or executive committee district.

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

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

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

(g) As soon as possible after the certification of the election of the new executive committees, as herein provided, they shall convene an organizational meeting within their respective political divisions, on the call of the chairman of corresponding outgoing executive committees or by any member of the new executive committee in the event there is no corresponding outgoing executive committee. During the first meeting the new executive committee must select a chairman, a treasurer and a secretary and other officers as they may desire. Each of the officers shall, for their respective committees, perform the duties that usually appertain to his or her office. The organizational meeting may be conducted prior to the beginning of the term, but no official action other than the election of officers and the appointment to fill vacancies on the committee may be made before the first day of July. A current listing of all executive committees' members shall be filed with the secretary of state by the end of July of each year. Vacancies in any executive committee shall be filled no later than four months after the vacancy occurs. The chairman of each executive committee shall submit an updated committee list as changes occur. Executive committee membership lists shall include at least the member's name, full address, employer, telephone number and term information. If a vacancy on an executive committee is not filled within the four-month period prescribed by the provisions of this section, the chair of the executive committee shall name someone to fill the vacancy within ten days of the expiration of the four-month period.

(h) Any meeting of any political party executive committee shall be held only after public notice and notice to each member is given according to party rules and shall be open to all members affiliated with the party. Meetings shall be
conducted according to party rules, all official actions
shall be made by voice vote and minutes shall be main-
tained and shall be open to inspection by members affili-
ated with the party.

§3-1-20. Cards of instructions to voters; sample ballots; posting.

(a) The board of ballot commissioners of each county
shall provide cards of general information which will
provide the date of the election and the hours during
which polling places will be open, instruction for mail-in
registrants and first-time voters and voters' rights and
prohibitions against fraud and misrepresentation and
cards of instruction for voters in preparing their ballots
and casting a provisional ballot as prescribed by the
secretary of state. They shall furnish a sufficient number
of cards to the commissioners of election at the same time
they deliver the ballots for the precinct.

(b) The commissioners of election shall post one instruc-
tion card in each voting booth giving instructions to the
voters on how to prepare the ballots for deposit in the
ballot boxes and how to obtain a new ballot in place of one
accidentally spoiled.

(c) The commissioners of election shall post one or more
other cards of general information at places inside and
outside of the voting place where voters pass or wait to
vote. The commissioners shall also post the official write-
in candidates in the same locations inside and outside of
the voting place.

(d) The ballot commissioners shall have printed, on a
different color paper than the official ballot, ten or more
copies of sample ballots for each voting place for each
election. Sample ballots shall be furnished and posted
with the cards of general information at each voting place.

(e) During the period of early in-person voting, the
official designated to supervise and conduct absentee
voting shall post the cards of general information, a list of
31 official write-in candidates and sample ballots within the
32 area where absentee voting is conducted.

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

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

5 (b) The persons required to provide the ballots necessary
6 for conducting all other elections are:

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

9 (2) The board of ballot commissioners, for any
10 countywide special election ordered by the county com-
11 mission;

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

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

21 (c) When paper ballots are used, the total number of
22 regular official ballots printed shall equal one and
23 one-twentieth times the number of registered voters
24 eligible to vote that ballot. The
25 circuit clerk shall determine the number of absentee
26 official ballots.

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

(e) All absentee ballots necessary for conducting absentee voting in all voting systems shall be delivered to the circuit clerk of the appropriate county not later than the forty-second day before the election. In counties where the clerk of the county commission is responsible for conducting absentee voting, the circuit clerk shall transfer the absentee ballots to the clerk of the county commission prior to the beginning of absentee voting. All official ballots in paper ballot systems shall be delivered to the circuit clerk of the appropriate county not later than twenty-eight days before the election.

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

§3-1-24. Obtaining and delivering election supplies.

(a) It shall be the duty of the clerk of the county commission to appoint one or more of the commissioners of
election or poll clerks at each precinct of the county to
attend at the offices of the clerks of the circuit court and
county commission, as the case may be, at least one day
before each election to receive the ballots, ballot boxes,
poll books, registration records and forms and all other
supplies and materials for conducting the election at the
respective precincts. The clerks shall take a receipt for the
respective materials delivered to the commissioners of
election or poll clerks and shall file the receipt in their
respective offices. It shall be the duty of the commission-
ers or poll clerks to receive the supplies and materials from
the respective clerks and to deliver them with the seal of
all sealed packages unbroken at the election precinct in
time to open the election.

(b) The commissioners or poll clerks, if they perform the
messenger services, shall receive the per diem and mileage
rate prescribed by law for this service.

(c) Ballots shall be delivered in sealed packages with
seals unbroken. For general and special elections the
delivered ballots shall not be in excess of one and one-
twentieth times the number of registered voters in the
precinct. For primary elections the ballots for each party
shall be in a separately sealed package containing not
more than one and one-twentieth times the number of
registered voters of each party in the election precinct.

(d) For primary elections one copy of the poll books,
including the written or printed forms for oaths of com-
missioners of election and poll clerks, shall be supplied at
each voting precinct for each political party appearing on
the primary ballot.

(e) There shall be two ballot boxes for each election
precinct for which a receiving and a counting board of
election commissioners have been appointed.

§3-1-25. Supplies by special messenger.

In case any commissioner of election or poll clerk fails to
appear at the offices of the clerks of the county commis-
sion and circuit courts by the close of the clerk's office on
the day prior to any election, the board of ballot commis-
ioners, the chairman or the circuit clerk shall forthwith
dispatch a special messenger to the commissioners of
election of each respective precinct with the ballots,
registration records, ballot boxes, poll books and other
supplies for the precinct. The messenger, if not a county
employee, shall be allowed five dollars for this service.
The messenger shall also receive mileage up to the rate of
reimbursement authorized by the travel management rule
of the department of administration for each mile neces-
sarily traveled in the performance of his or her services.
The messenger shall promptly report to the clerks of the
circuit court and county commission, respectively, and file
with the clerks the receipts of the person to whom he or
she delivered the ballots and other supplies and his or her
affidavit stating when and to whom he or she delivered
them.

§3-1-28. Election officials; eligibility, suspension of eligibility.

(a) To be eligible to be appointed or serve as an election
official in any state, county or municipal election held in
West Virginia, a person:

(1) Must be a registered voter of the county for elections
held throughout the county and a registered voter of the
municipality for elections held within the municipality:
Provided, That if the required number of persons eligible
to serve as election officials for a municipal election are
not available or are not willing to serve as election offi-
cials for a municipal election, a registered voter of the
county in which the municipality is located may serve as
an election official for elections held within the municipal-
ity.

(2) Must be able to read and write the English language;

(3) May not be a candidate on the ballot or an official
write-in candidate in the election;
(4) May not be the parent, child, sibling or spouse of a candidate on the ballot or an official write-in candidate in the precinct where the official serves;

(5) May not be a person prohibited from serving as an election official pursuant to any other federal or state statute; and

(6) May not have been previously convicted of a violation of any election law.

(b) The county commission may, upon majority vote, suspend the eligibility to serve as an election official in any election for four years for the following reasons:

(1) Failure to appear at the polling place at the designated time without proper notice and just cause;

(2) Failure to perform the duties of an election official as required by law;

(3) Improper interference with a voter casting a ballot or violating the secrecy of the voter's ballot;

(4) Being under the influence of alcohol or drugs while serving as an election official; or

(5) Having anything wagered or bet on an election.

(c) The county commission may, upon majority vote, suspend the eligibility to serve as an election official in any election for two years upon petition of twenty-five registered voters of the precinct where the official last served and upon presentation of evidence of any of the grounds set forth in subsection (b) of this section: Provided, That the petition requesting the suspension of the election official is filed with the county commission at least ninety days prior to an election date. The names of those persons signing the petition must be kept confidential.

§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, 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; and

(B) For precincts of more than five hundred registered voters, one standard receiving board or, at the discretion of the county commission, 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
§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) 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) The appointing body shall select one qualified person as the additional election commissioner for each board of election officials;

(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) 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:

(1) 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 is available to serve 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. 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. A
request by a handicapped person for a transfer of registration must 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 provisional ballot at a handicap accessible polling place in the county of his or her registration. If during the canvass the county commission determines that the person had been registered in a precinct that is 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, the county clerk processing the ballot shall provide the voter with an unmarked envelope and an outer envelope designated "provisional 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 provisional 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 deliver the ballot to the voter to be voted by him or her without leaving the election room. If he or she returns the ballot spoiled to the clerks, they shall immediately 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 required by this subsection. 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 challenger. 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 to the voter the names of the candidates selected on the ballot;

(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 an official write-in candidate; 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 assistance under the
provisions of this section shall nevertheless be permitted
to vote a provisional ballot with the assistance of any
person herein authorized to render assistance.

(3) Any one or more of the election commissioners or poll
clerks in the precinct may challenge the ballot on the
ground that the voter thereof received assistance in voting
it when in his, her or their opinion 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 compart-
ment 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 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 ballot so that the face is not exposed and so that the names of the poll clerks thereon are seen. The voter shall 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. The clerk of the county commission shall make the oaths, affirmations and list available for public inspection and shall preserve them for a period of twenty-two months or until disposition is authorized or directed by the secretary of state, or court of record: Provided, That the clerk may use these records to update the voter registration records in accordance with subsection (d), section eighteen, article two of this chapter.

(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 confined in the county or regional jail for a period of not more than one year, or both fined and confined.

(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
§3-1-39. Illegal voting; affidavit; procedure.

(a) If at any time during the election any qualified voter shall appear at the polls for the purpose of stating that any person who has voted is an illegal voter in the precinct, that person shall be admitted to the election room and shall appear before a commissioner of election to make an affidavit explaining why he or she believes the accused to be an illegal voter.

(b) All affidavits alleging illegal voting shall be placed in a strong and durable envelope by the commissioners of election. The envelope shall be securely sealed and each of the commissioners shall endorse his or her name on the back of the envelope. At the close of the count the envelope shall be delivered to the clerk of the circuit court in accordance with section sixteen, article five of this chapter and section eight, article six of this chapter. The clerk of the circuit court shall carefully preserve the envelope containing the affidavits and deliver it, with the seal unbroken, to the prosecuting attorney in the county. The prosecuting attorney shall proceed as if it had been made before him or her.

§3-1-41. Challenged and provisional voter procedures; counting of provisional voters' ballots; ballots of election officials.

(a) It shall be the duty of the members of the receiving board, jointly or severally, to challenge the right of any person requesting a ballot to vote in any election if the person's registration record is not available at the time of the election or if the signature written by the person in the poll book does not correspond with the signature purported to be his or hers on the registration record, if the registration record of the person indicates any other legal disqualification or if any other valid challenge exists
against the voter pursuant to section ten, article three of
this chapter.

(b) Any person challenged shall nevertheless be permit-
ted to vote in the election. He or she shall be furnished an
official ballot not endorsed by the poll clerks. In lieu of
the endorsements, the poll clerks shall complete and sign
an appropriate form indicating the challenge, the reason
thereof and the name or names of the challengers. The
form shall be securely attached to the voter's ballot and
deposited together with the ballot in a separate box or
envelope marked "provisional ballots".

(c) At the time that an individual casts a provisional
ballot, the poll clerk shall give the individual written
information stating that an individual who casts a provi-
sional ballot will be able to ascertain under the free access
system established in this section whether the vote was
counted and, if the vote was not counted, the reason that
the vote was not counted.

(d) Provisional ballot shall not be counted by the election
officials. The county commission shall, on its own motion,
at the time of canvassing of the election returns, sit in
session to determine the validity of any challenges accord-
ing to the provisions of this chapter. If the county com-
mission determines that the challenges are unfounded,
each provisional ballot of each challenged voter, if other-
wise valid, shall be counted and tallied together with the
regular ballots cast in the election. The county commis-
sion shall disregard technical errors, omissions or over-
sights if it can reasonably be ascertained that the chal-
lenged voter was entitled to vote.

(e) Any person duly appointed as an election commis-
sioner or clerk under the provisions of section twenty-
eight of this article who serves in that capacity in a
precinct other than the precinct in which the person is
legally entitled to vote may cast a provisional ballot in the
precinct in which the person is serving as a commissioner
or clerk. The ballot shall not be invalid for the sole reason of having been cast in a precinct other than the precinct in which the person is legally entitled to vote. The county commission shall record the provisional ballot on the voter’s permanent registration record: Provided, That the county commission may only count the votes for the offices that the voter was legally authorized to vote for in his or her own precinct.

(f) The secretary of state shall establish a free access system such as a toll-free telephone number or an internet website that may be accessed by any individual who casts a provisional ballot to discover whether the vote of that individual was counted and, if not, the reason that the vote was not counted.

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

(a) Each ballot commissioner is to be paid a sum, to be fixed by the county commission, not exceeding one hundred twenty-five dollars for each day he or she serves as ballot commissioner, but in no case may a ballot commissioner receive allowance for more than ten days' services for any one primary, general or special election.

(b) Each commissioner of election and poll clerk is to be paid a sum, to be fixed by the county commission, not exceeding one hundred twenty-five dollars for one day's services for attending the school of instruction for election officials if the commissioner or poll clerk provides at least one day's service during an election and a sum not exceeding one hundred seventy-five dollars for his or her services at any one election: Provided, That each commissioner of election and poll clerk is to be paid a sum not exceeding one hundred seventy-five dollars for his or her services at any of the three special elections described in subsection (f) of this section.

(c) Each alternate commissioner of election and poll clerk may be paid a sum, to be fixed by the county com-
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mission, not exceeding fifty dollars for one day’s services
for attending the school of instruction for election officials: Provided, That no alternate may be eligible for
compensation for election training unless the alternate is
subsequently appointed as an election official or is in-
structed to attend and actually attends training as an
alternate and is available to serve on election day.

(d) The commissioners of election or poll clerks obtaining
and delivering the election supplies, as provided in section
twenty-four of this article, and returning them, as pro-
vided in articles five and six of this chapter, are to be paid
an additional sum, fixed by the county commission, not
exceeding one hundred twenty-five dollars for his or her
services pursuant to this subsection at any one election. In
addition, he or she is to be paid mileage up to the rate of
reimbursement authorized by the travel management rule
of the department of administration for each mile neces-
sarily traveled in the performance of his or her services.

(e) The compensation of election officers, cost of printing
ballots and all other expenses incurred in holding and
making the return of elections, other than the three special
elections described in subsection (f) of this section, are to
be audited by the county commission and paid out of the
county treasury.

(f) The compensation of election officers, cost of printing
ballots and all other reasonable and necessary expenses in
holding and making the return of a special election for the
purpose of taking the sense of the voters on the question of
calling a constitutional convention, of a special election to
elect members of a constitutional convention and of a
special election to ratify or reject the proposals, acts and
ordinances of a constitutional convention are obligations
of the state incurred by the ballot commissioners, clerks of
the circuit courts, clerks of the county commissions and
county commissions of the various counties as agents of
the state. All expenses of these special elections are to be
audited by the secretary of state. The secretary of state
shall prepare and transmit to the county commissions forms on which the county commissions shall certify all expenses of these special elections to the secretary of state. If satisfied that the expenses as certified by the county commissions are reasonable and were necessarily incurred, the secretary of state shall requisition the necessary warrants from the auditor of the state to be drawn on the state treasurer and shall mail the warrants directly to the vendors of the special election services, supplies and facilities.

§3-1-45. Court proceedings to compel performance of duties, etc.

Any officer or person upon whom any duty is imposed by this chapter may be compelled to perform his or her duty by writ of mandamus. The circuit courts, or the judges thereof in vacation, shall have jurisdiction by writ and shall, upon affidavit filed showing a proper case, issue a writ to be returned, heard and determined within fifteen days from the commencement of the proceedings. If a circuit court, or a judge thereof in vacation, shall proceed against any board of canvassers by mandamus, or otherwise, to control, in any manner, the action of the board in the performance of its duties, under the provisions of this article, in any case concerning the election of a member of the House of Delegates, or a state senator, and shall fail to enter a final order in the proceedings, settling all questions presented therein within fifteen days from the commencement of the proceedings, unless delayed by proceedings in the supreme court of appeals, or a judge thereof in vacation, the writ shall be dismissed. The board shall convene within not less than five days thereafter and proceed forthwith to the performance of its duties under the provisions of this article. A mandamus shall lie from the supreme court of appeals, or any one of the judges thereof in vacation, returnable before court, to compel any officer herein to do and perform legally any duty required of him or her. In an election of a member of the House of Delegates and state senator, a writ of certiorari, mandamus or
prohibition shall lie from the supreme court of appeals, or a judge thereof in vacation, returnable before the court, to correct any error of law and review and correct the proceedings of any circuit court, or the judge thereof in vacation, or any board of canvassers. When any rule to show cause why a writ of mandamus, prohibition or certiorari is issued by the court, or a judge thereof in vacation, it shall be the duty of the court to convene in special session at the state capital, not later than ten days from the date of the writ, to hear and determine all matters arising upon the writ. The issues raised in the petition for a writ of mandamus, prohibition or certiorari shall have precedence over all other business pending before the court. The issues before the court shall be determined within five days from the assembling of the court and, in any case, in ample time for the case to be remanded and final action taken by the circuit court and the board of canvassers in order that the board may perform its duty and issue the certificate of election before the second Wednesday in January, then next following.

Mandamus and prohibition proceedings under this section may be upon affidavit alone.

§3-1-48. State election fund.

There is hereby created in the state treasury a special revenue account to be known as the "State Election Fund" account. Expenditures from the account shall be used by the secretary of state for the administration of this chapter in accordance with the provisions of 42 U. S. C. §1530, et seq., the Help America Vote Act of 2002, Public Law 107-252, in accordance with the provisions of article eleven, chapter four of this code.

§3-1-49. Voting system standards.

(a) In accordance with 42 U. S. C. §1530, et seq., the Help America Vote Act of 2002, Public Law 107-252, each voting system used in an election for federal office shall:
(1) Permit the voter to verify, in a private and independent manner, the votes selected by the voter on the ballot before the ballot is cast and counted;

(2) Provide the voter with the opportunity, in a private and independent manner, to change the ballot or correct any error before the ballot is cast and counted, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error; and

(3) If the voter selects votes for more than one candidate for a single office: (A) Notify the voter that the voter has selected more than one candidate for a single office on the ballot; (B) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and (C) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted:

Provided, That a county that uses a paper ballot voting system, a punch card voting system or an optical scan voting system may meet the requirements of this paragraph by establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and providing the voter with instructions on how to correct the ballot before it is cast and counted, including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error.

(4) Ensure that any notification required under this section preserves the privacy of the voter and the confidentiality of the ballot.

(b) Each voting system used in an election for federal office shall produce a record with an audit capacity for the system which shall meet the following requirements:

(1) Produce a permanent paper record with a manual audit capacity for the system; and
(2) Provide the voter with an opportunity to change the ballot or correct any error before the ballot is cast and counted and before the permanent paper record is produced.

(c) Each voting system used in an election for federal office shall be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters: Provided, That the provisions of this subsection may be satisfied through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.

§3-1-50. Establishment of state-based administrative complaint procedures.

(1) The procedures shall be uniform and nondiscriminatory.

(2) Under the procedures, any person who believes that there is a violation of any provision of this chapter, including a violation which has occurred, is occurring or is about to occur, may file a complaint.

(3) Any complaint filed under the procedures shall be in writing, notarized and signed and sworn by the person filing the complaint.

(4) The secretary of state may consolidate complaints filed under this section.

(5) At the request of the complainant, there shall be a hearing on the record.
(6) Violations of any provision of this chapter shall be punishable in accordance with the provisions of article nine of this chapter.

(7) If, under the procedures, the secretary of state determines that there is no violation, the secretary of state shall dismiss the complaint and publish the results of the procedures.

(8) The secretary of state shall make a final determination with respect to a complaint prior to the expiration of the ninety-day period which begins on the date the complaint is filed unless the complainant consents to a longer period for making a determination.

(9) If the secretary of state fails to meet the deadline applicable under subdivision (8) of this section, the complaint shall be resolved within sixty days under alternative dispute resolution procedures established for purposes of this section. The record and other materials from any proceedings conducted under the complaint procedures established under this section shall be made available for use under the alternative dispute resolution procedures.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-2. Eligibility to register to vote.

(a) Any person who possesses the constitutional qualifications for voting may register to vote. To be qualified, a person must be a citizen of the United States and a legal resident of West Virginia and of the county where he or she is applying to register, shall be at least eighteen years of age, except that a person who is at least seventeen years of age and who will be eighteen years of age by the time of the next ensuing general election may also be permitted to register, and shall not be otherwise legally disqualified: Provided, That a registered voter who has not reached eighteen years of age may vote both partisan and nonpartisan ballots in a state or county primary election, but may
only vote in a municipal primary election if he or she will
be eighteen years of age by the time of the next municipal
general election, but is not eligible to vote in a special
election.

(b) Any person who has been convicted of a felony,
treason or bribery in an election, under either state or
federal law, is disqualified and is not eligible to register or
to continue to be registered to vote while serving his or her
sentence, including any period of incarceration, probation
or parole related thereto. Any person who has been
determined to be mentally incompetent by a court of
competent jurisdiction is disqualified and shall not be
eligible to register or to continue to be registered to vote
for as long as that determination remains in effect.

§3-2-3. State authority relating to voter registration; chief
election official.

(a) The secretary of state, as chief election official of the
state as provided in section six, article one-a of this
chapter, shall have general supervision of the voter
registration procedures and practices and the maintenance
of voter registration records in the state and shall have
authority to require reports and investigate violations to
ensure the proper conduct of voter registration throughout
the state and all of its subdivisions.

(b) The secretary of state, as chief election official of the
state, is responsible for implementing, in a uniform and
nondiscriminatory manner, a single, uniform, official,
centralized, interactive computerized statewide voter
registration list defined, maintained and administered at
the state level that contains the name and registration
information of every legally registered voter in the state
and assigns a unique identifier to each legally registered
voter in the state.

(c) The secretary of state is hereby designated as the
chief election official responsible for the coordination of
The secretary of state shall have general supervision of voter registration procedures and practices at agencies and locations providing services as required by the provisions of this article and shall have the authority to propose procedural, interpretive and legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code for application for registration, transmission of applications, reporting and maintenance of records required by the provisions of this article and for the development, implementation and application of other provisions of this article.

§3-2-4a. Statewide voter registration list.

(a) The secretary of state shall implement and maintain a single, official, statewide, centralized, interactive computerized voter registration list of every legally registered voter in the state and shall assign a unique voter registration identifier to each legally registered voter in the state, which shall include the following:

(1) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the state.

(2) The computerized list shall contain the name and registration information of every legally registered voter in the state.

(3) Under the computerized list, a unique identifier shall be assigned to each legally registered voter in the state.

(4) The computerized list shall be coordinated with other agency databases within the state.

(5) The secretary of state and any clerk of the county commission may obtain immediate electronic access to the information contained in the computerized list.
(6) Voter registration information obtained by every clerk of the county commission in the state shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the clerk.

(7) The secretary of state shall provide necessary support to enable every clerk of the county commission in the state to enter information as described in subdivision (6) of this subsection.

(8) The computerized list shall serve as the official voter registration list for conducting all elections in the state.

(b) The secretary of state or any clerk of a county commission shall perform list maintenance with respect to the computerized list on a regular basis as follows:

(1) If an individual is to be removed from the computerized list, he or she shall be removed in accordance with the provisions of 42 U. S. C. §1973gg, et seq., the National Voter Registration Act of 1993.

(2) The secretary of state shall coordinate the computerized list with state agency records and remove the names of individuals who are not qualified to vote because of felony status or death.

(c) The list maintenance performed under subsection (b) of this section shall be conducted in a manner that ensures that:

(1) The name of each registered voter appears in the computerized list;

(2) Only voters who are not registered or who are not eligible to vote are removed from the computerized list; and

(3) Duplicate names are eliminated from the computerized list.
(d) The secretary of state and the clerks of all county commissions shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.

(e) The secretary of state shall ensure that voter registration records in the state are accurate and updated regularly, including the following:

(1) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under the system, consistent with 42 U. S. C. §1973gg, et seq., registrants who have not responded to a notice sent pursuant to section twenty-four, article three of this chapter and who have not voted in two consecutive general elections for federal office shall be removed from the official list of eligible voters except that no registrant may be removed solely by reason of a failure to vote.

(2) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(f) Applications for voter registration may only be accepted when the following information is provided:

(1) Except as provided in subdivision (2) of this subsection, notwithstanding any other provision of law to the contrary, an application for voter registration may not be accepted or processed unless the application includes either: (A) In the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or (B) in the case of any other applicant, the last four digits of the applicant's social security number.

(2) If an applicant for voter registration has not been issued a current and valid driver's license or a social security number, the secretary of state shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent
that the state has a computerized list in effect under this section and the list assigns unique identifying numbers to registrants, the number assigned under this section shall be the unique identifying number assigned under the list.

(g) The secretary of state and the commissioner of the division of motor vehicles shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the division of motor vehicles to the extent required to enable each official to verify the accuracy of the information provided on applications for voter registration.

(h) The commissioner of the division of motor vehicles shall enter into an agreement with the commissioner of social security under 42 U. S. C. §301, et seq., the Social Security Act.

§3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.

(a)(1) All state forms for application for voter registration shall be prescribed by the secretary of state and shall conform with the requirements of 42 U. S. C. §1973gg, et seq., the "National Voter Registration Act of 1993" and the requirements of the provisions of this article. Separate application forms may be prescribed for voter registration conducted by the clerk of the county commission, registration by mail, registration in conjunction with an application for motor vehicle driver's license and registration at designated agencies. These forms may consist of one or more parts, may be combined with other forms for use in registration by designated agencies or in conjunction with driver licensing and may be revised and reissued as required by the secretary of state to provide for the efficient administration of voter registration.

(2) Notwithstanding any provisions of subdivision (1) of this subsection to the contrary, the federal postcard
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application for voter registration issued pursuant to 42 U. S. C. §1973, et seq., the "Uniformed and Overseas Citizens Absentee Voting Act of 1986", and the mail voter registration application form prescribed by the Federal Election Commission pursuant to 42 U. S. C. §1973gg, et seq., the "National Voter Registration Act of 1993", shall be accepted as a valid form of application for registration pursuant to the provisions of this article.

(b) Each application form for registration shall include:

(1) A statement specifying the eligibility requirements for registration and an attestation that the applicant meets each eligibility requirement;

(2) Any specific notice or notices required for a specific type or use of application by 42 U. S. C. §1973gg, et seq., the "National Voter Registration Act of 1993";

(3) A notice that a voter may be permitted to vote the partisan primary election ballot of a political party only if the voter has designated that political party on the application for registration unless the political party has determined otherwise;

(4) The last four digits of the applicant's social security number or the applicant's driver's license number; and

(5) Any other instructions or information essential to complete the application process.

(c) Each application form shall require that the following be provided by the applicant, under oath, and any application which does not contain each of the following shall be considered incomplete:

(1) The applicant's legal name, including the first name, middle or maiden name, if any, and last name;

(2) The month, day and year of the applicant's birth;

(3) The applicant's residence address, including the number and street or route and city and county of residence except:
(A) In the case of a person eligible to register under the provisions of 42 U. S. C. §1973ff, *et seq.*, the "Uniformed and Overseas Citizens Absentee Voting Act", the address at which he or she last resided before leaving the United States or entering the uniformed services, or if a dependent child of such a person, the address at which his or her parent last resided; and

(B) In the case of a homeless person having no fixed residence address who nevertheless resides and remains regularly within the county, the address of a shelter, assistance center or family member with whom he or she has regular contact or other specific location approved by the clerk of the county commission for the purposes of establishing a voting residence; and

(4) The applicant's signature, under penalty of perjury, as provided in section thirty-six of this article to the attestation of eligibility to register to vote and to the truth of the information given.

(d) The applicant shall be requested to provide the following information, but no application shall be rejected for lack of this information:

(1) An indication whether the application is for a new registration, change of address, change of name or change of party affiliation;

(2) The applicant's choice of political party affiliation, if any, or an indication of no affiliation: *Provided,* That any applicant who does not enter any choice of political party affiliation shall be listed as having no party affiliation on the voting record;

(3) The applicant's residence mailing address if different than the residence street address;

(4) The last four digits of the applicant's social security number;

(5) The applicant's telephone number;
(6) The address at which the applicant was last registered to vote, if any, for the purpose of canceling or transferring the previous registration; and

(7) The applicant's gender.

(e) The secretary of state shall prescribe the printing specifications of each type of voter registration application and the voter registration application portion of any form which is part of a combined agency form.

(f) Application forms prescribed in this section may refer to various public officials by title or official position, but in no case may the actual name of any officeholder be printed on the voter registration application or on any portion of a combined application form.

(g) No later than the first day of July of each odd-numbered year the secretary of state shall submit the specifications of the voter registration application by mail for statewide bidding for a contract period beginning the first day of September of each odd-numbered year and continuing for two calendar years. The successful bidder shall produce and supply the required mail voter registration forms at the contract price to all purchasers of the form for the period of the contract.

§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.

(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 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.

§3-2-10. Application for registration by mail.

(a) Any qualified person may apply to register, change, transfer or correct his or her voter registration by mail. Application shall be made on a prescribed form as provided by section five of this article.

(b) To the extent possible, with funds allocated annually for such purpose, the secretary of state shall make state mail registration forms available for distribution through governmental and private entities and organized voter registration programs. The secretary of state shall make a record of all requests by entities or organizations for ten or more forms with a description of the dates and locations in which the proposed registration drive is to be conducted. The secretary of state may limit the distribution to a reasonable amount per group.
(c) The clerk of the county commission shall provide up to four mail registration forms to any resident of the county upon request. To the extent possible with funds allocated annually for the purpose, the clerk of the county commission shall make state mail registration forms available for distribution through organized voter registration programs within the county. The clerk of the county commission shall make a record of all requests by entities or organizations for ten or more forms with a description of the dates and locations in which the proposed registration drive is to be conducted. The clerk may limit the distribution to a reasonable amount per group.

(d) The applicant shall provide all required information and, only after completing the information, sign the prescribed applicant's oath under penalty of perjury as provided in section thirty-six of this article. No person may alter or add any entry or make any mark which would alter any material information on the voter registration application after the applicant has signed the oath: Provided, That the clerk of the county commission may correct any entry upon the request of the applicant provided the request is properly documented and the correction is dated and initialed by the clerk.

(e) Completed applications shall be mailed or delivered to the clerk of the county commission of the county in which the voter resides. If a clerk receives a completed mail application form from a voter whose residence address is located in another county, the clerk shall forward that application within three days to the clerk of the county commission of the county of the applicant's residence.

(f) Upon receipt of the application for registration by the appropriate clerk of the county commission, the clerk shall:

(1) Attempt to establish whether the residence address given is within the boundaries of an incorporated munici-
pality and, if so, make the proper entry required for municipal residents to be properly identified for municipal voter registration purposes; and

(2) Immediately begin the verification process required by the provisions of section sixteen of this article.

(g) Any person who registers by mail pursuant to this section and who has not previously voted in an election in the state or if the statewide voter registration has not yet been implemented, the voter has not previously voted in the county shall be required to present the following forms of identification to the secretary of state or clerk of the county commission:

(1) In the case of an individual who votes in person, a current and valid photo identification; or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter;

(2) In the case of an individual who votes by mail, submits with the ballot a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter.

(h) An individual who desires to vote in person or by mail, but who does not meet the requirements of subsection (g), may cast a provisional ballot.

(i) Subsection (g) shall not apply in the case of a person:

(1) Who registers to vote by mail under 42 U. S. C. §1973gg-4, et seq., and submits as part of his or her registration either a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or government document that shows the name and address of the voter;
(2)(A) Who registers to vote by mail under 42 U. S. C. §1973gg-4, et seq., and submits with his or her registration either a driver's license number or at least the last four digits of the individual's social security number; and (B) with respect to whom the secretary of state or clerk of the county commission matches the information submitted under paragraph (A) with an existing state identification record bearing the same number, name and date of birth as provided in the registration; or

(3) Who is: (A) Entitled to vote by absentee ballot under 42 U. S. C. §1973ff-1, et seq., the Uniformed and Overseas Citizens Absentee Voting Act; (B) provided the right to vote otherwise than in person under 42 24 U. S. C. §1973ee-1(b) (2) (B) (ii); or 25 (iii), section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act; (C) entitled to vote otherwise than in person under any other federal law: Provided, That any person who has applied for an absentee ballot pursuant to the provisions of subdivision (1), subsection (b), section one, article three of this chapter; paragraph (B), subdivision (2) of said subsection; subdivision (3) of said subsection; or subsection (c) of said section shall not have his or her ballot in that election challenged for failure to appear in person or for failure to present identification.

(j) Any person who submits a state mail voter registration application to the clerk of the county commission in the county in which he or she is currently registered for the purpose of entering a change of address within the county, making a change of party affiliation or recording a change of legal name shall not be required to make his or her first vote in person or to present identification or proof of age.

§3-2-13. Agencies to provide voter registration services; designation of responsible employees; forms; prohibitions; confidentiality.

(a) For the purposes of this article, "agency" means a department, division or office of state or local government,
or a program supported by state funds, which is designated under this section to provide voter registration services, but does not include departments, divisions or offices required by other sections of this article to provide voter registration services.

(b) Beginning on the first day of January, one thousand nine hundred ninety-five, the following agencies shall provide voter registration services pursuant to the provisions of this article:

(1) Those state agencies which administer or provide services under the food stamp program, the “Aid to Families with Dependent Children” (AFDC) program, the “Women, Infants and Children” (WIC) program and the medicaid program;

(2) Those state-funded agencies primarily engaged in providing services to persons with disabilities;

(3) County marriage license offices; and

(4) Armed services recruitment offices, as required by federal law.

(c) No later than the first day of October, one thousand nine hundred ninety-four, the secretary of state shall, in conjunction with a designated representative of each of the appropriate state agencies, review those programs and offices established and operating with state funds which administer or provide public assistance or services to persons with disabilities and shall promulgate an emergency rule pursuant to the provisions of chapter twenty-nine-a of this code designating the specific programs and offices required to provide voter registration services in order to comply with the requirements of this section and the requirements of the “National Voter Registration Act of 1993” (42 U. S. C. §1973gg, et seq.). The offices and programs so designated shall begin providing voter registration services on the first day of January, one thousand nine hundred ninety-five.
(d) No later than the first day of July, one thousand nine hundred ninety-six, and each even-numbered year thereafter, the secretary of state shall, in conjunction with the designated representatives of the appropriate state agencies, perform the review as required by the provisions of subsection (c) of this section. The secretary of state shall periodically review and revise, if necessary, the legislative rule designating the specific agencies required to provide voter registration services.

(e) Each state agency required to provide services pursuant to the provisions of this article shall designate a current employee of that agency to serve as a state supervisor to administer voter registration services required in all programs under the agency's jurisdiction. Each state supervisor shall be responsible for coordination with the secretary of state, overall operation of the program in conjunction with services within the agency, designation and supervision of local coordinators and for the review of any complaints filed against employees relating to voter registration as provided in this chapter.

(f) The state supervisor shall designate a current employee as a local coordinator for voter registration services for each office or program delivery center who shall be responsible for the proper conduct of voter registration services, timely return of completed voter registration applications, proper handling of declinations and reporting requirements. Notice of the designation of these persons shall be made upon request of the secretary of state and within five days following any change of designation.

(g) The registration application forms used for agency registration shall be issued pursuant to the provisions of section five of this article.

(h) The secretary of state, in conjunction with those agencies designated to provide voter registration services pursuant to the provisions of this section, shall prescribe
the form or portion of the appropriate agency form required by the provisions of 42 U.S.C. §1973gg, et seq., section 7(a)(6)(B) of the “National Voter Registration Act of 1993”, containing the required notices and providing boxes for the applicant to check to indicate whether the applicant would like to register or decline to register to vote. The form or portion of the form is designated the “declination form”.

(i) A person who provides voter registration services shall not:

(1) Seek to influence an applicant's political preference or party registration;

(2) Display to any applicant any political preference or party allegiance;

(3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(j) No information relating to the identity of a voter registration agency through which any particular voter is registered or to a declination to register to vote in connection with an application made at any designated agency may be used for any purpose other than voter 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 statewide voter registration system is adopted pursuant to the provisions of section four-a 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 alphabetically 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 municipal 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) 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.
§3-2-30. Public inspection of voter registration records in the office of the clerk of the county commission; providing voter lists for noncommercial use; prohibition against resale of voter lists for commercial use or profit.

(a) The active, inactive, rejected and canceled voter registration records shall be made available for public inspection during office hours of the clerk of the county commission in accordance with the provisions of chapter twenty-nine-b of this code as follows:

(1) When the active and inactive files are maintained on precinct registration books, any person shall be allowed to examine these files under the supervision of the clerk and obtain copies of records except when a precinct book is in temporary use for updating and preparing lists or during the time the books are sealed for use in an election. Other original voter registration records, including canceled voter records, pending applications, rejected applications, records of change requests, reinstatements and other documents, shall be available for inspection upon specific request;

(2) When the active, inactive, rejected and canceled voter files are maintained in data format, any person shall be allowed to examine voter record information in printed form or in a read-only data format on a computer terminal set aside for public use, if available. The data files available shall include all registration and voting information maintained in the file, except that the telephone number and social security number of any voter shall not be available for inspection or copying in any format.

(b) Printed lists of registered voters may be purchased for noncommercial use from the clerk of the county commission at a cost of one cent per name.
(1) In counties maintaining active and inactive files on precinct registration books only, a separate list for each of the two major political parties and for voters registered independent or other affiliation shall be prepared for each precinct. The lists shall be arranged in alphabetical order or street order, as the books are maintained, and shall include the name, residence address and party affiliation of the voter, along with a designation of inactive status where applicable. The lists shall be prepared prior to the primary election and the clerk shall not be required to supplement or revise those lists as registrations are added or canceled.

(2) In counties maintaining active and inactive files in digitized data format, the clerk of the county commission shall, upon request, prepare printed copies of the lists of voters for each precinct. No list prepared under this section may include the telephone number or social security number of the registrant. The clerk shall establish a written policy, which shall be posted within public view, listing the options which may be requested for selection and sorting criteria and available data elements, which shall include at least the name, residence address, political party affiliation and status and the format of the lists and the times at which lists will be prepared. A copy of the policy shall be filed with the secretary of state no later than the first day of January, one thousand nine hundred ninety-five, and within thirty days after any change in policy.

(c) In counties which maintain voter files in a digitized data format, lists of registered voters may be obtained for noncommercial purposes in data format on disk provided and prepared by the clerk of the county commission at a cost of one cent per name plus ten dollars for each disk required. No data file prepared under this subsection may include the telephone number or social security number of the registrant.
(d) The fees received by the clerk of the county commission shall be kept in a separate fund under the supervision of the clerk for the purpose of defraying the cost of the preparation of the voter lists. Any unexpended balance in the fund shall be transferred to the general fund of the county commission.

(e) After the implementation of the state uniform voter data system, the secretary of state may make voter lists available for sale subject to the limitations as provided in this section for counties, except that the cost shall be one and one-half cents per name plus ten dollars for each disk required. One cent per name for each voter from a particular county on each list sold shall be reimbursed to the appropriate county and one-half cent per name shall be deposited to a special account for purpose of defraying the cost of the preparation of the lists.

(f) No voter registration lists or data files containing the names, addresses or other information relating to voters derived from voter data files obtained pursuant to the provisions of this article may be used for commercial or charitable solicitations or advertising, sold or reproduced for resale.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-1. Persons eligible to vote absentee ballots.

(a) All registered and other qualified voters of the county may vote an absentee ballot during the period of early voting in person.

(b) Registered voters and other qualified voters in the county are authorized to vote an absentee ballot by mail in the following circumstances:

(1) Any voter who is confined to a specific location and prevented from voting in person throughout the period of voting in person because of:

(A) Illness, injury or other medical reason;
(B) Physical disability or immobility due to extreme advanced age; or

(C) Incarceration or home detention: Provided, That the underlying conviction is not for a crime which is a felony or a violation of section twelve, thirteen or sixteen, article nine of this chapter involving bribery in an election;

(2) Any voter who is absent from the county throughout the period and available hours for voting in person because of:

(A) Personal or business travel;

(B) Attendance at a college, university or other place of education or training; or

(C) Employment which because of hours worked and distance from the county seat make voting in person impossible;

(3) Any voter absent from the county throughout the period and available hours for voting in person and who is an absent uniformed services voter or overseas voter, as defined by 42 U. S. C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including members of the uniformed services on active duty, members of the merchant marine, spouses and dependents of those members on active duty and persons who reside outside the United States and are qualified to vote in the last place in which the person was domiciled before leaving the United States;

(4) Any voter who is required to dwell temporarily outside the county and is absent from the county throughout the time for voting in person because of:

(A) Serving as an elected or appointed federal or state officer; or

(B) Serving in any other documented employment assignment of specific duration of four years or less; and
(5) Any voter for whom the designated area for absentee voting within the county courthouse or annex of the courthouse and the voter's assigned polling place are inaccessible because of his or her physical disability.

(c) Registered voters and other qualified voters in the county may, in the following circumstances, vote an emergency absentee ballot, subject to the availability of the services as provided in this article:

(1) Any voter who is confined or expects to be confined in a hospital or other duly licensed health care facility within the county of residence or other authorized area, as provided in this article, on the day of the election;

(2) Any voter who resides in a nursing home within the county of residence and would be otherwise unable to vote in person, providing the county commission has authorized the services if the voter has resided in the nursing home for a period of less than thirty days; and

(3) Any voter who is working as a replacement poll worker and is assigned to a precinct out of his or her voting district, if the assignment was made after the period for voting an absentee ballot in person has expired.

§3-3-2. Authority to conduct absentee voting; absentee voting application; form.

(a) Absentee voting is to be supervised and conducted by the proper official for the political division in which the election is held, in conjunction with the ballot commissioners appointed from each political party, as follows:

(1) For any election held throughout the county, within a political subdivision or territory other than a municipality, or within a municipality when the municipal election is conducted in conjunction with a county election, the clerk of the county commission: Provided, That if the clerk of the county commission and the clerk of the circuit court jointly petition the county commission setting forth their
agreement that the clerk of the circuit court should continue to supervise and conduct the absentee voting, the county commission shall designate the clerk of the circuit court to supervise and conduct the absentee voting; or

(2) The municipal recorder or other officer authorized by charter or ordinance provisions to conduct absentee voting, for any election held entirely within the municipality, or in the case of annexation elections, within the area affected. The terms "clerk" or "circuit clerk" or "official designated to supervise and conduct absentee voting" used elsewhere in this article means municipal recorder or other officer in the case of municipal elections.

(b) A person authorized and desiring to vote a mail-in absentee ballot in any primary, general or special election is to make application in writing in the proper form to the proper official as follows:

(1) The completed application is to be on a form prescribed by the secretary of state and is to contain the name, date of birth and political affiliation of the voter, residence address within the county, the address to which the ballot is to be mailed, the authorized reason, if any, for which the absentee ballot is requested and, if the reason is illness or hospitalization, the name and telephone number of the attending physician, the signature of the voter to a declaration made under the penalties for false swearing as provided in section three, article nine of this chapter that the statements and declarations contained in the application are true, any additional information which the voter is required to supply, any affidavit which may be required and an indication as to whether it is an application for voting in person or by mail; or

(2) For any person authorized to vote an absentee ballot under the provisions of 42 U. S. C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, the completed application may be on the federal
postcard application for absentee ballot form issued under
authority of that act; or

(3) For any person unable to obtain the official form for
absentee balloting at a reasonable time before the deadline
for an application for an absentee ballot by mail is to be
received by the proper official, the completed application
may be in a form set out by the voter, provided all infor-
mation required to meet the provisions of this article is set
forth and the application is signed by the voter requesting
the ballot.

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

Throughout the period of early in-person voting, 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 permit-
ted 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.
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.

The official designated to supervise and conduct absentee voting shall have at least two representatives to assist with absentee voting: Provided, That the two representatives shall not be registered with the same political party affiliation or two persons registered with no political party affiliation. The representatives may be full-time employees, temporary employees hired for the period of absentee voting in person or volunteers.

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. Early voting in person.

(a) The voting period for early in person voting is to be conducted during regular business hours beginning on the twentieth day before the election and continuing through the third day before the election. For any election held on a Tuesday, the early voting period for in-person voting is to be available from 9:00 a.m. to 5:00 p.m. on the two Saturdays prior to the election.

(b) Any person desiring to vote during the period of early in-person voting shall, upon entering the election room, clearly state his or her name and residence to the official or representative designated to supervise and conduct absentee voting. If that person is found to be duly registered as a voter in the precinct of his or her residence, he or she shall be required to sign his or her name in the space marked "signature of voter" on the pollbook. If the voter is unable to sign his or her name due to illiteracy or physical disability, the person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided. No ballot may be given to the person until he or she signs his or her name on the pollbook.

(c) When the voter's signature or mark is properly on the pollbook, two qualified representatives of the official designated to supervise and conduct absentee voting shall sign their names in the places indicated on the back of the official ballot.

(d) If the official designated to supervise and conduct absentee voting determines that the voter is not properly registered in the precinct where he or she resides, the clerk or his or her representative shall challenge the voter's absentee ballot as provided in this article.

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

(1) In counties using paper ballots, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(2) In counties using punch card systems, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law, and a gray secrecy envelope;

(3) In counties using optical scan systems, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law, and a secrecy sleeve; or

(4) For direct recording election systems, access to the voting equipment in the voting booth.

(f) 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 absentee voter shall: Place the ballot or ballots in the gray secrecy envelope and return the ballot or ballots to the official designated to supervise and conduct the absentee voting: Provided, however, That in direct recording election systems, once the voter has cast his or her ballot, the voter shall exit the polling place.

(g) Upon receipt of the voted ballot, representatives of the official designated to supervise and conduct the absentee voting shall:

(1) Remove the ballot stub;

(2) Place punch card ballots and paper ballots into one envelope which shall not have any marks except the precinct number and seal the envelope;

(3) Place ballots for all voting systems into a ballot box that is secured by two locks with a key to one lock kept by
the president of the county commission and a key to the
other lock kept by the county clerk.

(4) Due to the reenactment of this section by the Legisla-
ture in the two thousand three regular session removing
authorization for early in-person voting on the Monday
prior to a Tuesday election, to assure notice to all persons
that voted on the Monday before the Tuesday election day
of the two thousand two general election are made aware
of this change, the clerk of each county shall, for the
primary election of the year two thousand four, include
along with the sample ballots published in local newspa-
pers as required by this chapter a notice to voters that
Monday in-person voting will no longer be available.

§3-3-5. Voting an absentee ballot by mail; penalties.

(a) Upon oral or written request, the official designated
to supervise and conduct absentee voting shall provide to
any voter of the county, in person, by mail or by facsimile,
if the official has access to facsimile equipment, the
appropriate application for voting absentee by mail as
provided in this article. The voter shall complete and sign
the application in his or her own handwriting or, if the
voter is unable to complete the application because of
illiteracy or physical disability, the person assisting the
voter and witnessing the mark of the voter shall sign his or
her name in the space provided.

(b) Completed applications for voting an absentee ballot
by mail is to be accepted when received by the official
designated to supervise and conduct absentee voting in
person, by mail or by facsimile, if the official has access to
facsimile equipment, within the following times:

(1) For persons eligible to vote an absentee ballot under
the provisions of subdivision (3), subsection (b), section
one of this article, relating to absent uniformed services
and overseas voters, not earlier than the first day of
January of an election year, or eighty-four days preceding
the election, whichever is earlier, and not later than the sixth day preceding the election, which application is to, upon the voter's request, be accepted as an application for the ballots for all elections in the calendar year; and

(2) For all other persons eligible to vote an absentee ballot by mail, not earlier than eighty-four days preceding the election and not later than the sixth day preceding the election.

(c) Upon acceptance of a completed application, the official designated to supervise and conduct absentee voting shall determine whether the following requirements have been met:

(1) The application has been completed as required by law;

(2) The applicant is duly registered to vote in the precinct of his or her residence and, in a primary election, is qualified to vote the ballot of the political party requested;

(3) The applicant is authorized for the reasons given in the application to vote an absentee ballot by mail;

(4) The address to which the ballot is to be mailed is an address outside the county if the voter is applying to vote by mail under the provisions of paragraph (A) or (B), subdivision (2), subsection (d), section one of this article; or subdivision (3) or (4) of said subsection;

(5) The applicant is not making his or her first vote after having registered by postcard registration or, if the applicant is making his or her first vote after having registered by postcard registration, the applicant is exempt from these requirements; and

(6) No regular and repeated pattern of applications for an absentee ballot by mail for the reason of being out of the county during the entire period of voting in person exists to suggest that the applicant is no longer a resident of the county.
(d) If the official designated to supervise and conduct absentee voting determines that the required conditions have been met, two representatives that are registered to vote with different political party affiliations shall sign their names in the places indicated on the back of the official ballot. If the official designated to supervise and conduct absentee voting determines the required conditions have not been met, or has evidence that any of the information contained in the application is not true, the official shall give notice to the voter that the voter's absentee ballot will be challenged as provided in this article and shall enter that challenge.

(e) Within one day after the official designated to supervise and conduct absentee voting has both the completed application and the ballot, the official shall mail to the voter at the address given on the application the following items as prescribed by the secretary of state:

1. One of each type of official absentee ballot the voter is eligible to vote, prepared according to law;
2. 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. One postage paid envelope, unsealed, designated "Absent Voter's Ballot Envelope No. 2";
4. Instructions for voting absentee by mail;
5. For electronic systems, one punching tool for perforating or a device for marking by electronically sensible pen or ink, as may be appropriate;
6. 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; and
7. Any other supplies required for voting in the particular voting system.
(f) The voter shall mark the ballot alone: Provided, That the voter may have assistance in voting according to the provisions of section six of this article. After the voter has voted the ballot or ballots, the 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 absentee voting.

(g) Except as provided in subsection (h) of this section, absentee ballots returned by United States mail or other express shipping service are to be accepted if: (1) The ballot is received by the official designated to supervise and conduct absentee voting no later than the day after the election; or (2) the ballot bears a postmark of the United States postal service dated no later than election day and the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

(h) Absentee ballots received through the United States mail from persons eligible to vote an absentee ballot under the provisions of subdivision (3), subsection (b), section one of this article, relating to uniform services and overseas voters, are to be accepted if the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

(i) Ballots received after the proper time which cannot be accepted are to be placed unopened in an envelope marked for the purpose and kept secure for twenty-two months following the election, after which time they are to be destroyed without being opened.

(j) Absentee ballots which are hand delivered are to be accepted if they are received by the official designated to supervise and conduct absentee voting no later than the
day preceding the election: Provided, That no person may hand deliver more than two absentee ballots in any election, and any person hand delivering an absentee ballot is required to certify that he or she has not examined or altered the ballot. Any person who makes a false certification violates the provisions of article nine of this chapter and is subject to those provisions.

(k) Upon receipt of the sealed envelope, the official designated to supervise and conduct 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 into a ballot box that is secured by two locks with a key to one lock kept by the president of the county commission and a key to the other lock kept by the county clerk.

§3-3-5c. Procedures for voting an emergency absentee ballot by qualified voters.

(a) Notwithstanding any other provision of this chapter, a person qualified to vote an emergency absentee ballot, as provided in subsection (c), section one of this article may vote an emergency absentee ballot under the procedures established in this section. The county commission may adopt a policy extending the emergency absentee voting procedures to: (1) Hospitals or other duly licensed health care facilities within an adjacent county or within thirty-five miles of the county seat; or (2) nursing homes within the county: Provided, That the policy is to be adopted by the county commission at least ninety days prior to the election that will be affected and a copy of the policy is to be filed with the secretary of state.
(b) On or before the fifty-sixth day preceding the date on which any election is to be held the official designated to supervise and conduct absentee voting shall notify the county commission of the number of sets of emergency absentee ballot commissioners which he or she determines necessary to perform the duties and functions pursuant to this section.

(c) A set of emergency absentee ballot commissioners at-large shall consist of two persons with different political party affiliations appointed by the county commission in accordance with the procedure prescribed for the appointment of election commissioners under the provisions of article one of this chapter. Emergency absentee ballot commissioners have the same qualifications and rights and take the same oath required under the provisions of this chapter for commissioners of elections. Emergency absentee ballot commissioners are to be compensated for services and expenses in the same manner as commissioners of election or poll clerks obtaining and delivering election supplies under the provisions of section forty-four, article one of this chapter.

(d) Upon request of the voter or a member of the voter's immediate family or, when the county commission has adopted a policy to provide emergency absentee voting services to nursing home residents within the county, upon request of a staff member of the nursing home, the official designated to supervise and conduct absentee voting, upon receiving a proper request for voting an emergency absentee ballot no earlier than the seventh day next preceding the election and no later than noon of election day shall supply to the emergency absentee ballot commissioners the application for voting an emergency absentee ballot and the balloting materials. The emergency absentee ballot application is to be prescribed by the secretary of state and is to include the name, residence address and political party affiliation of the voter, the date, location...
and reason for confinement in the case of an emergency, and the name of the attending physician.

(e) The application for an emergency absentee ballot is to be signed by the person applying. If the person applying for an emergency absentee ballot is unable to sign his or her application because of illiteracy or physical disability, he or she is to make his or her mark on the signature line provided for an illiterate or disabled applicant, the mark is to be witnessed. The person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided.

(f) A declaration is to be completed and signed by each of the emergency absentee ballot commissioners, stating their names, the date on which they appeared at the place of confinement of the person applying for an emergency absentee ballot and the particulars of the confinement.

(g) At least one of the emergency absentee ballot commissioners receiving the balloting materials shall sign a receipt which is to be attached to the application form. Each of the emergency absentee ballot commissioners shall deliver the materials to the absent voter, await his or her completion of the application and ballot and return the application and the ballot to the official designated to supervise and conduct absentee voting. Upon delivering the application and the voted ballot to the official, the emergency absentee ballot commissioners shall sign an oath that no person other than the absent voter voted the ballot. The application and the voted ballot are to be returned to the official designated to supervise and conduct absentee voting prior to the close of the polls on election day. Any ballots received by the official after the time that delivery may reasonably be made but before the closing of the polls are to be delivered to the canvassing board along with the absentee ballots challenged in accordance with the provisions of section ten of this article.
(h) Upon receiving the application and emergency absentee ballot, the official designated to supervise and conduct absentee voting shall ascertain whether the application is complete, whether the voter appears to be eligible to vote an emergency absentee ballot, and whether the voter is properly registered to vote with the office of the clerk of the county commission. If the voter is found to be properly registered in the precinct shown on the application, the ballot is to be delivered to the precinct election commissioner pursuant to section seven of this article. If the voter is found not to be registered or is otherwise ineligible to vote an emergency ballot, the ballot is to be challenged for the appropriate reason provided for in section ten of this article.

(i) If either or both of the emergency absentee ballot commissioners refuse to sign any application for voting an emergency absentee ballot, the voter may vote as an emergency absentee and the ballot will be challenged in accordance with the provisions of section ten of this article, in addition to those absentee ballots subject to challenge as provided in that section.

(j) Any voter who receives assistance in voting an emergency absentee ballot shall comply with the provisions of section six of this article. Any other provisions of this chapter relating to absentee ballots not altered by the provisions of this section are to govern the treatment of emergency absentee ballots.

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

(a) Except as otherwise provided in this article, in counties using paper ballots systems or voting machines, 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) 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 provisional ballots.

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

(a) In counties using paper ballots, all absentee ballots shall be processed as follows:

(1) The ballot boxes containing the absentee ballots shall be opened in the presence of the clerk of the county commission and two representatives of opposite political parties;

(2) The ballots shall be separated by precincts as stated on the sealed envelopes containing the ballots; and

(3) Absentee ballots shall be delivered to the polls to be opened and counted in accordance with section thirty-three, article one of this chapter, section fifteen, article five of this chapter, and section six, article six of this chapter. Disclosure of any results before the voting has been closed and the precinct returns posted on the door of the polling place shall be a per se violation of the oath taken by the counting board. In all other counties, counting is to begin immediately after closing of the polls.
(b) In the counties using punch card systems, the absentee ballots shall be processed as follows:

(1) On election day, the ballot boxes containing the absentee ballots shall be delivered to the central counting center and opened in the presence of the clerk of the county commission and two representatives of opposite political parties;

(2) The ballots shall be separated by precincts as stated on the sealed envelopes containing the ballots; and

(3) The absentee ballots shall be counted in accordance with section twenty-seven, article four-a of this chapter.

(c) In counties using optical scan systems, the absentee ballots shall be processed as follows:

(1) On election day, the ballot boxes containing the absentee ballots shall be delivered to the central counting center and opened in the presence of the clerk of the county commission and two representatives of opposite political parties; and

(2) The absentee ballots shall be counted in accordance with section twenty-seven, article four-a of this chapter.

(d) In counties using direct recording elections systems, the absentee ballots shall be counted in accordance with section twenty-seven, article four-a of this chapter.

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

(f) 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.

§3-3-10. Challenging of absent voters' ballots.
(a) The official designated to supervise and conduct absentee voting may challenge an absent voter's ballot on any of the following grounds:

(1) That the application for an absent voter's ballot has not been completed as required by law;

(2) That any statement or declaration contained in the application for an absent voter's ballot is not true;

(3) That the applicant for an absent voter's ballot is not registered to vote in the precinct of his or her residence as provided by law;

(4) That the person voting an absent voter's ballot by personal appearance in his or her office had assistance in voting the ballot when the person was not qualified for voting assistance because: (A) The affidavit of the person who received assistance does not indicate a legally sufficient reason for assistance; or (B) the person who received assistance did not make an affidavit as required by this article; or (C) the person who received assistance is not so illiterate as to have been unable to read the names on the ballot or that he or she is not so physically disabled as to have been unable to see or mark the absent voter's ballot;

(5) That the person who voted an absent voter's ballot by mail and received assistance in voting the ballot was not qualified under the provisions of this article for assistance; and

(6) That the person has voted absentee by mail as a result of being out of the county more than four consecutive times: Provided, That the determination as to whether the person has voted more than four consecutive times does not apply if the person is a citizen residing out of the United States; or a member, spouse or dependent of a member serving in the uniformed services; or a college student living outside of his or her home county.
Any one or more of the election commissioners or poll clerks in a precinct may challenge an absent voter's ballot on any of the following grounds:

1. That the application for an absent voter's ballot was not completed as required by law;
2. That any statement or declaration contained in the application for an absent voter's ballot is not true;
3. That the person voting an absent voter's ballot is not registered to vote in the precinct of his or her residence as provided by law;
4. That the signatures of the person voting an absent voter's ballot as they appear on his or her registration record, his or her application for an absent voter's ballot and the absent voter's ballot envelope are not in the same handwriting;
5. That the person voting an absent voter's ballot by personal appearance had assistance in voting the ballot when the person was not qualified for assistance because:
   A. The affidavit of the person who received assistance does not indicate a legally sufficient reason for assistance;
   B. The person who received assistance did not make an affidavit as required by this article; or
   C. The person who received assistance is not so illiterate as to have been unable to read the names on the ballot or that he or she was not so physically disabled as to have been unable to see or mark the absent voter's ballot;
6. That the person voted an absent voter's ballot by mail and received assistance in voting the ballot when not qualified under the provisions of this article for assistance;
7. That the person who voted the absent voter's ballot voted in person at the polls on election day;
8. That the person voted an absent voter's ballot under authority of subdivision (3), subsection (b), section one of this article and is or was present in the county in which he
or she is registered to vote between the opening and
closing of the polls on election day; and

(9) on any other ground or for any reason on which or
for which the ballot of a voter voting in person at the polls
on election day may be challenged.

No challenge may be made to any absent voter ballot if
the voter was registered and qualified to vote pursuant to
the provisions of subsection (a), section one of this article.

(c) Forms for, and the manner of, challenging an absent
voter's ballot under the provisions of this article are to be
prescribed by the secretary of state.

(d) Absent voters' ballots challenged by the official
designated to supervise and conduct absentee voting under
the provisions of this article are to be transmitted by the
official directly to the county commission sitting as a
board of canvassers. The absent voters' ballots challenged
by the election commissioners and poll clerks under the
provisions of this article may not be counted by the
election officials but are to be transmitted by them to the
county commission sitting as a board of canvassers.
Action by the board of canvassers on challenged absent
voters' ballots is to be governed by the provisions of
section forty-one, article one of this chapter.

§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
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11 or rejection of any measure, proposition or other public
12 question to be voted on by the voters, are to be prepared
13 and printed under the direction of the board of ballot
14 commissioners constituted as provided in article one of
15 this chapter. The several county boards of ballot commis-
16 sioners shall prepare and have printed, in the number they
17 may determine, absent voters' ballots that are to be
18 printed under their directions as provided in this chapter
19 and those ballots are to be delivered to the clerk of the
20 circuit court of the county not less than forty-two days
21 before the day of the election at which they are to be used.
22 In counties where the clerk of the county commission is
23 responsible for conducting absentee voting, the circuit
24 clerk shall transfer the absentee ballots to the clerk of the
25 county commission prior to the beginning of absentee
26 voting.

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

ARTICLE 4. VOTING MACHINES.

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

1 (a) The ballot commissioners of any county in which
2 voting machines are to be used in any election shall cause
3 to be printed for use in the election the ballot labels for the
4 voting machines and paper ballots for absentee voting,
voting by persons unable to use the voting machine and
provisional 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 in a size that 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 candi-
dates 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 provi-
sional 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 ma-
chine shall be retained by the clerk of the county commis-
sion 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 the “independent” voters
who shall, in primary elections, cast their votes on nonpar-
tisan candidates and public questions submitted to the
voters.

§3-4-23. Voting by challenged voters.

If the right of any person to vote is challenged in accor-
dance with provisions of article one of this chapter relat-
ing to the challenging of voters, the person shall not be
permitted to cast his or her vote by use of the voting
machine but he or she shall be supplied by the election
officer at the polling place with an official printed ballot
of the election. The provisional ballot shall not be en-
dorsed on the back by the poll clerks but, when voted by
the challenged voter, shall have affixed thereto by the poll
clers their statement of information as to the challenge
on the form prescribed therefor. The provisional ballots
shall be secured, handled and disposed of as provisional ballots in other elections, as provided in article one of this chapter.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-9. Minimum requirements of electronic voting systems.

An electronic voting system of particular make and design may not be approved by the state election commission or be purchased, leased or used by any county commission unless it meets the following requirements:

1. It secures or ensures the voter absolute secrecy in the act of voting or, at the voter's election, provides for open voting;

2. It is constructed to ensure that no person, except in instances of open voting as provided for in this section, can see or know for whom any voter has voted or is voting;

3. It permits each voter to vote at any election for all persons and offices for whom and which he or she is lawfully entitled to vote, whether or not the name of any person appears on a ballot or ballot label as a candidate; and it permits each voter to vote for as many persons for an office as he or she is lawfully entitled to vote for; and to vote for or against any question upon which he or she is lawfully entitled to vote. The automatic tabulating equipment used in electronic voting systems is to reject choices recorded on any ballot if the number of choices exceeds the number to which a voter is entitled;

4. It permits each voter to deposit, write in, affix upon a ballot, card, envelope or other medium to be provided for that purpose, ballots containing the names of persons for whom he or she desires to vote whose names do not appear upon the ballots or ballot labels;

5. It permits each voter to change his or her vote for any candidate and upon any question appearing upon the ballots or ballot labels up to the time when his or her
ballot is deposited in the ballot box or his or her ballot is cast by electronic means;

(6) It contains a program deck consisting of cards that are sequentially numbered or consisting of a computer program disk, diskette, tape or other programming media containing sequentially numbered program instructions and coded or otherwise protected from tampering or substitution of the media or program instructions by unauthorized persons and capable of tabulating all votes cast in each election;

(7) It contains two standard validation test decks approved as to form and testing capabilities by the state election commission;

(8) It correctly records and counts accurately all votes cast for each candidate and for and against each question appearing upon the ballots or ballot labels;

(9) It permits each voter at any election other than primary elections by one mark or punch to vote a straight party ticket, as provided in section five, article six of this chapter.

(10) It permits each voter in primary elections to vote only for the candidates of the party for which he or she is legally permitted to vote and precludes him or her from voting for any candidate seeking nomination by any other political party, permits him or her to vote for the candidates, if any, for nonpartisan nomination or election and permits him or her to vote on public questions;

(11) It, where applicable, is provided with means for sealing or electronically securing the vote recording device to prevent its use and to prevent tampering with ballot labels, both before the polls are open or before the operation of the vote recording device for an election is begun and immediately after the polls are closed or after the operation of the vote recording device for an election is completed;
(12) It has the capacity to contain the names of candidates constituting the tickets of at least nine political parties and accommodates the wording of at least fifteen questions;

(13) Where vote recording devices are used, they:

(A) Are durably constructed of material of good quality and in a workmanlike manner and in a form which makes it safely transportable;

(B) Are so constructed with frames for the placing of ballot labels that the labels upon which are printed the names of candidates and their respective parties, titles of offices and wording of questions are reasonably protected from mutilation, disfigurement or disarrangement or are constructed to ensure that the screens upon which appear the names of the candidates and their respective parties, titles of offices and wording of questions are reasonably protected from any modification;

(C) Bear a number that will identify it or distinguish it from any other machine;

(D) Are constructed to ensure that a voter may easily learn the method of operating it and may expeditiously cast his or her vote for all candidates of his or her choice and upon any public question;

(E) Are accompanied by a mechanically or electronically operated instruction model which shows the arrangement of ballot labels, party columns or rows, and questions;

(F) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed to provide for the direct electronic recording and tabulating of votes cast in a system specifically designed and engineered for the election application;

(G) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or
by means of touch, are constructed to prevent any voter from voting for more than the allowable number of candidates for any office, to include an audible or visual signal, or both, warning any voter who attempts to vote for more than the allowable number of candidates for any office or who attempts to cast his or her ballot prior to its completion and are constructed to include a visual or audible confirmation, or both, to the voter upon completion and casting of the ballot;

(H) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot;

(I) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed to allow election commissioners to spoil a ballot where a voter fails to properly cast his or her ballot, has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot;

(J) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed to allow election commissioners, poll clerks, or both, to designate, mark or otherwise record provisional ballots;

(K) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, consist of devices which are independent, nonnetworked voting systems in which each vote is recorded and retained within each device's internal nonvolatile electronic memory and contain an internal
(L) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, store each vote in no fewer than three separate, independent, nonvolatile electronic memory components and that each device contains comprehensive diagnostics to ensure that failures do not go undetected;

(M) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, contain a unique, embedded internal serial number for auditing purposes for each device used to activate, retain and record votes;

(N) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed to record all preelection, election and post election activities, including all ballot images and system anomalies, in each device’s internal electronic memory and are to be accessible in electronic or printed form;

(O) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed with a battery backup system in each device to, at a minimum, prevent the loss of any votes, as well as all preelection, election and post-election activities, including all ballot images and system anomalies, stored in the device’s internal electronic memory and to allow voting to continue for two hours of uninterrupted operation in case of an electrical power failure; and

(P) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed to prevent the loss of any votes, as well as all preelection, election and post-election activities, including all ballot images and system
anomalies, stored in each device’s internal electronic memory even in case of an electrical and battery power failure.

§3-4A-19. Conducting electronic voting system elections generally; duties of election officers; penalties.

(a) The election officers shall constantly and diligently maintain a watch in order to see that no person votes more than once and to prevent any voter from occupying the voting booth for more than five minutes.

(b) In primary elections, before a voter is permitted to occupy the voting booth, the election commissioner representing the party to which the voter belongs shall direct the voter to the vote recording device or supply the voter with a ballot, as may be appropriate, which will allow the voter to vote only for the candidates who are seeking nomination on the ticket of the party with which the voter is affiliated or for unaffiliated voters in accordance with section thirty-one, article two of this chapter.

(c) The poll clerk shall issue to each voter when he or she signs the pollbook a card or ticket numbered to correspond to the number on the pollbook of the voter and in the case of a primary election, indicating the party affiliation of the voter, which numbered card or ticket is to be presented to the election commissioner in charge of the voting booth.

(d) One hour before the opening of the polls the precinct election commissioners shall arrive at the polling place and set up the voting booths in clear view of the election commissioners. Where applicable, they shall open the vote recording devices, place them in the voting booths, examine them to see that they have the correct ballots or ballot labels, where applicable by comparing them with the sample ballots, and determine whether they are in proper working order. They shall open and check the ballots, supplies, records and forms and post the sample ballots or ballot labels and instructions to voters. Upon ascertaining
that all ballots, supplies, records and forms arrived intact,
the election commissioners shall certify their findings in
writing upon forms provided and collected by the clerk of
the county commission over their signatures to the clerk of
the county commission. Any discrepancies are to be noted
and reported immediately to the clerk of the county
commission. The election commissioners shall then
number in sequential order the ballot stub of each ballot
in their possession and report in writing to the clerk of the
county commission the number of ballots received. They
shall issue the ballots in sequential order to each voter.

(e) Where applicable, each voter shall be instructed how
to operate the vote recording device before he or she enters
the voting booth.

(f) Where applicable, any voter who spoils, defaces or
mutilates the ballot delivered to him or her, on returning
the ballot to the poll clerks, shall receive another in its
place. Every person who does not vote any ballot deliv-
ered to him or her shall, before leaving the election room,
return the ballot to the poll clerks. When a spoiled or
defaced ballot is returned, the poll clerks shall make a
minute of the fact on the pollbooks, at the time, write the
word “spoiled” across the face of the ballot and place it in
an envelope for spoiled ballots.

Immediately on closing the polls, the election commis-
sioners shall ascertain the number of spoiled ballots
during the election and the number of ballots remaining
not voted. The election commissioners shall also ascertain
from the pollbooks the number of persons who voted and
shall report, in writing signed by them to the clerk of the
county commission, any irregularities in the ballot boxes,
the number of ballots cast, the number of ballots spoiled
during the election and the number of ballots unused. All
unused ballots are to be returned at the same time to the
clerk of the county commission who shall count them and
record the number. All unused ballots shall be stored with
the other election materials and destroyed at the expira-
the other election materials and destroyed at the expiration of twenty-two months.

(g) Each commissioner who is a member of an election board which fails to account for every ballot delivered to it 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 not more than one year, or both.

(h) The board of ballot commissioners of each county, or the chair of the board, shall preserve the ballots that are left over in their hands, after supplying the precincts as provided, until the close of the polls on the day of election and shall deliver them to the clerk of the county commission who shall store them with the other election materials and destroy them at the expiration of twenty-two months.

(i) Where ballots are used, the voter, after he or she has marked his or her ballot, shall, before leaving the voting booth, place the ballot inside the envelope provided for this purpose, with the stub extending outside the envelope, and return it to an election commissioner who shall remove the stub and deposit the envelope with the ballot inside in the ballot box. No ballot from which the stub has been detached may be accepted by the officer in charge of the ballot box, but the ballot shall be marked "spoiled" and placed with the spoiled ballots. If an electronic voting system is used that utilizes a screen on which votes may be recorded by means of a stylus or by means of touch and the signal warning that a voter has attempted to cast his or her ballot has failed to do so properly has been activated and the voter has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot while the voter remains physically present in the polling place, then two election commissioners of different registered party affiliations, two poll clerks of different registered party affiliations or an election commissioner and a poll clerk of different registered party affiliations shall spoil the ballot.
(j) The precinct election commissioners shall prepare a report in quadruplicate of the number of voters who have voted and, where electronic voting systems are used that utilize a screen on which votes may be recorded by means of a stylus or by means of touch, the number of ballots that were spoiled, as indicated by the pollbooks, and shall place two copies of this report in the ballot box or where electronic voting systems are used that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, shall place two copies of this report and the electronic ballot devices in a container provided by the clerk of the county commission, which thereupon is to be sealed with a paper seal signed by the election commissioners to ensure that no additional ballots may be deposited or removed from the ballot box. Two election commissioners of different registered party affiliations shall forthwith deliver the ballot box or container to the clerk of the county commission at the central counting center and receive a signed numbered receipt therefor. The receipt must carefully set forth in detail any and all irregularities pertaining to the ballot boxes or containers and noted by the precinct election officers.

The receipt is to be prepared in duplicate, a copy of which remains with the clerk of the county commission who shall have any and all irregularities noted. The time of their departure from the polling place is to be noted on the two remaining copies of the report, which are to be immediately mailed to the clerk of the county commission.

(k) The pollbooks, register of voters, unused ballots, spoiled ballots and other records and supplies are to be delivered to the clerk of the county commission, all in conformity with the provisions of this section.

§3-4A-22. Assistance to illiterate and disabled voters.

(a) Any duly 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 one of the following means:
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(1) 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 or by an officer or agent of a labor union of which the voter is a past or present member or a candidate on the ballot or official write-in candidate; or

(2) If no person of the voter’s choice be present at the polling place, the voter may request assistance from the poll clerks or ballot commissioners present at the polling place, whereupon assistance may be given by any two of the election officers of opposite political party affiliation to whom the voter shall thereupon declare his or her choice of candidates and his or her position on public questions appearing on the ballot. The election officers, in the presence of the voter and in the presence of each other, shall thereupon cause the voter’s declared choices to be recorded on the ballot or a vote recording device, as may be appropriate, as votes.

(b) A person other than an election officer who assists a voter in voting under the provisions of this section shall sign a written oath or affirmation before assisting the voter, stating that he or she will not override the actual preference of the voter being assisted or mislead the voter into voting for someone other than the candidate of the 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.

§3-4A-24a. Voting by challenged voter where touch-screen electronic voting systems are used.

If the right of any person to vote is challenged in accordance with the provisions of article one of this chapter, relating to the challenging of voters, and a vote recording device or ballot is used that tabulates the vote as an individual vote, the person is to be permitted to cast his or her vote by use of the vote recording device or ballot, as may be appropriate. An election commissioner shall enter
into the voting device a voter-specific electronic code for any person voting a provisional ballot. The devices are to retain provisional ballots in electronic memory and are not to be tabulated in accordance with the provisions of this code, but are to be reviewed in accordance with the provisions of this code.

After the county commission, as prescribed in article one of this chapter, has determined that the challenges are unfounded, the commissioners shall ensure that the ballots are included in the tabulation.

§3-4A-27. Proceedings at the central counting center.

(a) All proceedings at the central counting center are to be under the supervision of the clerk of the county commission and are to be conducted under circumstances which allow observation from a designated area by all persons entitled to be present. The proceedings shall take place in a room of sufficient size and satisfactory arrangement to permit observation. Those persons entitled to be present include all candidates whose names appear on the ballots being counted or if a candidate is absent, a representative of the candidate who presents a written authorization signed by the candidate for the purpose and two representatives of each political party on the ballot who are chosen by the county executive committee chairperson. A reasonable number of the general public is also freely admitted to the room. In the event all members of the general public desiring admission to the room cannot be admitted at one time, the county commission shall provide for a periodic and convenient rotation of admission to the room for observation, to the end that each member of the general public desiring admission, during the proceedings at the central counting center, is to be granted admission for reasonable periods of time for observation: Provided, That no person except those authorized for the purpose may touch any ballot or ballot card or other official records and papers utilized in the election during observation.
(b) All persons who are engaged in processing and counting the ballots are to work in teams consisting of two persons of opposite political parties, and are to be deputized in writing and take an oath that they will faithfully perform their assigned duties. These deputies are to be issued an official badge or identification card which is assigned an identity control number and the deputies are to prominently wear on his or her outer garments the issued badge or identification card. Upon completion of the deputies' duties, the badges or identification cards are to be returned to the county clerk.

(c) Ballots are to be handled and tabulated and the write-in votes tallied according to procedures established by the secretary of state, subject to the following requirements:

(1) In systems using punch card ballots, the ballot cards and secrecy envelopes for a precinct are to be removed from the box and examined for write-in votes before being separated and stacked for delivery to the tabulator. Immediately after valid write-in votes are tallied, the ballot cards are to be delivered to the tabulator. No write-in vote may be counted for an office unless the voter has entered the name of that office and the name of an official write-in candidate for that office on the inside of the secrecy envelope, either by writing, affixing a sticker or label or placing an ink-stamped impression thereon;

(2) In systems using ballots marked with electronically sensible ink, ballots are to be removed from the boxes and stacked for the tabulator which separates ballots containing marks for a write-in position. Immediately after tabulation, the valid write-in votes are to be tallied. No write-in vote may be counted for an office unless the voter has entered the name of an official write-in candidate for that office on the line provided, either by writing, affixing a sticker or placing an ink-stamped impression thereon;
(3) In systems using ballots in which votes are recorded upon screens with a stylus or by means of touch, the personalized electronic ballots are to be removed from the containers and stacked for the tabulator. Systems using ballots in which votes are recorded upon screens with a stylus or by means of touch are to tally write-in ballots simultaneously with the other ballots;

(4) When more than one person is to be elected to an office and the voter desires to cast write-in votes for more than one official write-in candidate for that office, a single punch or mark, as appropriate for the voting system, in the write-in location for that office is sufficient for all write-in choices. When there are multiple write-in votes for the same office and the combination of choices for candidates on the ballot and write-in choices for the same office exceed the number of candidates to be elected, the ballot is to be duplicated or hand counted, with all votes for that office rejected;

(5) Write-in votes for nomination for any office and write-in votes for any person other than an official write-in candidate are to be disregarded;

(6) When a voter casts a straight ticket vote and also punches or marks the location for a write-in vote for an office, the straight ticket vote for that office is to be rejected, whether or not a vote can be counted for a write-in candidate; and

(7) Official write-in candidates are those who have filed a write-in candidate’s certificate of announcement and have been certified according to the provisions of section four-a, article six of this chapter.

(d) If any ballot card is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy is to be made of the damaged ballot card in the presence of representatives of each political party on the ballot and substituted for the
damaged ballot card. All duplicate ballot cards are to be
clearly labeled “duplicate” and are to bear a serial number
which is recorded on the damaged or defective ballot card
and on the replacement ballot card.

(e) The returns printed by the automatic tabulating
equipment at the central counting center, to which have
been added write-in and other valid votes, are, when
certified by the clerk of the county commission, to consti-
tute the official preliminary returns of each precinct or
election district. Further, all the returns are to be printed
on a precinct basis. Periodically throughout and upon
completion of the count, the returns are to be open to the
public by posting the returns as have been tabulated
precinct by precinct at the central counting center. Upon
completion of the canvass, the returns are to be posted in
the same manner.

(f) If for any reason it becomes impracticable to count all
or a part of the ballots with tabulating equipment, the
county commission may direct that they be counted
manually, following as far as practicable the provisions
governing the counting of paper ballots.

(g) As soon as possible after the completion of the count,
the clerk of the county commission shall have the vote
recording devices properly boxed or securely covered and
removed to a proper and secure place of storage.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-10. Publication of sample ballots and lists of candidates.

1 (a) The ballot commissioners of each county shall
2 prepare a sample official primary ballot for each party
3 and, as the case may be, for the nonpartisan candidates to
4 be voted for at the primary election, according to the
5 provisions of this article and articles four and four-a of
6 this chapter, as appropriate to the voting system. If any
7 ballot issue is to be voted on in the primary election, the
8 ballot commissioners shall likewise prepare a sample
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official ballot for that issue according to the provisions of law authorizing the election.

(b) The facsimile sample ballot for each political party and for nonpartisan candidates or ballot issues shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, not more than twenty-six nor less than twenty days preceding the primary election, the ballot commissioners shall publish each sample official primary election ballot as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, not more than twenty-six nor less than twenty days preceding the primary election, the ballot commissioners shall publish the sample official primary election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code; and

(3) Each facsimile sample ballot shall be a photographic reproduction of the official sample ballot or ballot pages and shall be printed in a size no less than eighty percent of the actual size of the ballot, at the discretion of the ballot commissioners: Provided, That when the ballots for the precincts within the county contain different senatorial, delegate, magisterial or executive committee districts or when the ballots for precincts within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided onto more than one page, the arrangement and order shall be made to
conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

(c) The ballot commissioners of each county shall prepare, in the form and manner prescribed by the secretary of state, an official list of offices and candidates for each office which will appear on the primary election ballot for each party and, as the case may be, for the nonpartisan candidates to be voted for at the primary election. All information which appears on the ballot, including instructions as to the number of candidates for whom votes may be cast for the office, any additional language which will appear on the ballot below the name of the office, any identifying information relating to the candidates, such as residence, magisterial district or presidential preference, and the ballot numbers of the candidates for punch card systems shall be included in the list in the same order in which it appears on the ballot. Following the names of all candidates, the list shall include the full title, text and voting positions of any issue to appear on the ballot.

(d) The official list of candidates and issues as provided in subsection (c) of this section shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, on the last day on which a newspaper is published immediately preceding the primary election, the ballot commissioners shall publish the official list of candidates and issues as a Class 1-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers
which publish weekly, on the last day on which a newspaper is published immediately preceding the primary election, the ballot commissioners shall publish the sample official list of nominees and issues as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(3) The publication of the official list of candidates for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows: (A) The words “official list of candidates”, the name of the county, the words “primary election”, the date of the election, the name of the political party or the designation of nonpartisan candidates shall be printed in all capital letters and in bold type no smaller than fourteen point. The designation of the national, state, district or other tickets shall be printed in all capital letters in type no smaller than fourteen point; (B) the title of the office shall be printed in bold type no smaller than twelve point and any voting instructions or other language printed below the title shall be printed in bold type no smaller than ten point; and (C) the names of the candidates shall be printed in all capital letters in bold type no smaller than ten point and the residence information shall be printed in type no smaller than ten point; and

(4) When any ballot issue is to appear on the ballot, the title of that ballot shall be printed in all capital letters in bold type no smaller than fourteen point. The text of the ballot issue shall appear in no smaller than ten point type. The ballot commissioners may require the publication of the ballot issue under this subsection in the facsimile sample ballot format in lieu of the alternate format.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, beginning with the primary election to be held in the year two thousand, the ballot commissioners
of any county may choose to publish a facsimile sample
ballot for each political party and for nonpartisan candi-
dates or ballot issues instead of the official list of offices
and candidates for each office for purposes of the last
publication required before any primary election.

§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 elec-
tion.

(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 elec-
tronic 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 Educa-
tion”. 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 presi-
dential 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 modi-
fied 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 secre-
ty 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) 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.

(i) 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”.

(j) 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.

(k) 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.

§3-5-15. Ascertaining and certifying primary election results.

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 first process the absentee ballots according to the provisions of section eight, article three of this chapter. After the absentee ballots to be counted have been deposited in the ballot box, the election officers shall proceed to ascertain the result of the election in the following manner:
(a) The receiving board shall ascertain from the poll books and record separately on the proper form the total number of voters of each party and nonpartisan voters who have voted.

(1) The number of provisional ballots of each party shall be counted and subtracted from the number of voters of the same party, which result should equal the number of ballots of that party deposited in the ballot box.

(2) The total of all voters, including both partisan and nonpartisan voters, minus the total of all provisional ballots, should equal the number of nonpartisan ballots deposited in the ballot box.

(3) The commissioners and clerks shall also report, over their signatures, the number of each type of ballots spoiled and the number of each type of ballots not voted.

(b) The procedure for counting ballots, whether performed 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. If properly signed, the commissioner shall announce which type of ballot it is, and 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 nomination for any office and write-in votes for election for any person other than an official write-in candidate shall be disregarded;
(3) The commissioner responsible for removing the ballots from the box shall keep a tally of the number of ballots of each party and any nonpartisan ballot as they are removed, and whenever the number of ballots of a particular party shall equal the number of voters entered on the poll book for that party minus the number of provisional ballots of that party, 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 of each party 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;

(5) When the votes have been read from a ballot, the ballot shall be immediately strung on a thread, with separate threads for each party's ballots and for nonpartisan ballots.

(c) As soon as the results at the precinct are ascertained, the commissioners and clerks shall make out and sign four certificates of result, for each party represented, of the vote for all candidates of each party represented, on a form prescribed by the secretary of state, giving the complete returns of the election at the polling place, which form shall include the following oath:

"We, the undersigned commissioners and poll clerks of the primary election held at precinct No. .................. of .............. district of ................. County, W.Va., on the ........ day of ............., 20...., do hereby certify that having been first duly sworn, we have carefully and impartially ascertained the result of said election at said precinct for the candidates on the official ballot of the ................. party, and the same is as follows:
The election officers shall enter the name of each office and the full name of each candidate on the ballot, and the number of votes, in words and numbers, received by each. The election officers shall also enter the full name of every official write-in candidate for election to offices to be filled in the primary, except delegate to national convention, and the number of votes for each. Three of the certificates of result of election, for each party, shall be sealed in separately addressed envelopes, furnished for the purpose, and shall be disposed of by the precinct commissioners as follows: One of the sealed envelopes containing the returns of each party shall be delivered to the clerk of the circuit court and two shall be delivered to the clerk of the county commission who shall, within forty-eight hours, mail one of the sealed returns for each precinct by certified mail to the secretary of state. The one not sealed up shall be posted on the outside of the front door of the polling place.

(d) All ballots voted for candidates of each party shall be sealed up in separate envelopes and the commissioners and clerks shall each sign across the seal.

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

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

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

(2) Each appointment made under this section is complete only upon the receipt by the proper filing officer of the certificate of appointment by the executive committee, or its chairperson, as the case may be, the certificate of announcement of the candidate as prescribed in section seven of this article and, except for appointments made under subdivision (4), (5), (6) or (7) of this subsection, the filing fee or waiver of fee as prescribed in section eight or eight-a of this article. The proper filing officer is the officer with whom the original certificate of nomination is regularly filed for that office.

(3) If a vacancy in nomination is caused by the failure of a candidate to file for an office, or by withdrawal of a candidate no later than the third Tuesday following the close of candidate filing pursuant to the provisions of section eleven of this article, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than the Thursday preceding the primary election.

(4) If a vacancy in nomination is caused by the disqualification of a candidate and the vacancy occurs not later than eighty-four days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer not later than seventy-eight days before the general election. A candidate may be determined ineligible if a written request is made by an individual with information to show a candidate's ineligibility to the state election commission no later than ninety-five days before the general election explaining grounds why a candidate is not eligible to be placed on the general election ballot or not eligible to hold the office, if elected. The state election commission shall review the reasons for the request. If the commission finds the circumstances warrant the disqualification of the candidate, the commission may authorize appointment by the
executive committee to fill the vacancy. Upon receipt of
the authorization a nominee may be appointed by the
executive committee and certified to the proper filing
officer no later than seventy-eight days before the general
election.

(5) If a vacancy in nomination is caused by the incapacity
of the candidate and if the vacancy occurs not later
than eighty-four days before the general election, a
nominee may be appointed by the executive committee
and certified to the proper filing officer no later than
seventy-eight days before the general election.

(6) If a vacancy in nomination is caused by the withdrawal
of the candidate no later than ninety-eight days
before the general election due to extenuating personal
circumstances which will prevent the candidate from
serving in the office if elected and if the candidate or the
chairperson of the executive committee for the political
division applies in writing to the state election commission
no later than ninety-five days before the general election
for permission to remove the candidate's name from the
general election ballot, the state election commission shall
review the reasons for the request. If the commission finds
the circumstances warrant the withdrawal of the candidate, the commission shall authorize appointment by the
executive committee to fill the vacancy. Upon receipt of
the authorization, a nominee may be appointed by the
executive committee and certified to the proper filing
officer no later than seventy-eight days before the general
election.

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

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

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-3. Publication of sample ballots and lists of candidates.

(a) The ballot commissioners of each county shall prepare a sample official general election ballot for all political party or independent nominees, nonpartisan candidates for election, if any, and all ballot issues to be voted for at the general election, according to the provisions of this article and articles four and four-a of this chapter, as appropriate to the voting system, and for any ballot issue, according to the provisions of law authorizing the election.

(b) The facsimile sample general election ballot shall be published as follows:
(1) For counties in which two or more qualified newspapers publish a daily newspaper, not more than twenty-six nor less than twenty days preceding the general election, the ballot commissioners shall publish the sample official general election ballot as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, not more than twenty-six nor less than twenty days preceding the primary election, the ballot commissioners shall publish the sample official general election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code; and

(3) Each facsimile sample ballot shall be a photographic reproduction of the official sample ballot or ballot pages and shall be printed in a size no less than eighty percent of the actual size of the ballot, at the discretion of the ballot commissioners: Provided, That when the ballots for the precincts within the county contain different senatorial, delegate, magisterial or executive committee districts or when the ballots for precincts within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

(c) The ballot commissioners of each county shall prepare, in the form and manner prescribed by the secre-
tary of state, an official list of offices and nominees for each office which will appear on the general election ballot for each political party or as independent nominees and, as the case may be, for the nonpartisan candidates to be voted for at the general election:

(1) All information which appears on the ballot, including the names of parties for which a straight ticket may be cast, instructions relating to straight ticket voting, instructions as to the number of candidates for whom votes may be cast for the office, any additional language which will appear on the ballot below the name of the office, any identifying information relating to the candidates, such as residence, magisterial district or presidential preference, and the ballot numbers of the candidates for punch card systems shall be included in the list in the order specified in subdivision (2) of this subsection. Following the names of all candidates, the list shall include the full title, text and voting positions of any issue to appear on the ballot.

(2) The order of the straight ticket positions, offices and candidates for each office and the manner of designating the parties shall be as follows: (A) The straight ticket positions shall be designated “straight (party name) ticket”, with the parties listed in the order in which they appear on the ballot, from left to right or from top to bottom, as the case may be; (B) the offices shall be listed in the same order in which they appear on the ballot; (C) the candidates within each office for which one is to be elected shall be listed in the order they appear on the ballot, from left to right or from top to bottom, as the case may be, and the candidate’s political party affiliation or independent status shall be indicated by the one or two letter initial specifying the affiliation, placed in parenthesis to the right of the candidate’s name; and (D) the candidates within each office for which more than one is to be elected shall be arranged by political party groups in the order they appear on the ballot and the candidate’s affiliation shall be indicated as provided in part (C) of this subdivision.
(d) The official list of candidates and issues as provided in subsection (c) of this section shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, on the last day on which a newspaper is published immediately preceding the general election, the ballot commissioners shall publish the official list of nominees and issues as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily paper, or having only one or more qualified newspapers which publish weekly, on the last day on which a newspaper is published immediately preceding the general election, the ballot commissioners shall publish the sample official list of nominees and issues as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(3) The publication of the official list of nominees for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows: (A) The words “official list of nominees and issues”, the name of the county, the words “General Election” and the date of the election shall be printed in all capital letters and in bold type no smaller than fourteen point; (B) the designation of the straight ticket party positions shall be printed in all capital letters in bold type no smaller than twelve point and the title of the office shall be printed in bold type no smaller than twelve point and any voting instructions or other language printed below the title shall be printed in bold type no smaller than ten point; and (C) the names of the candidates and the initial within parenthesis designating the candidate’s affiliation shall be printed in all capital letters in
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(4) When any ballot issue is to appear on the ballot, the title of that ballot shall be printed in all capital letters in bold type no smaller than twelve point. The text of the ballot issue shall appear in no smaller than ten point type.

The ballot commissioners may require the publication of the ballot issue under this subsection in the facsimile sample ballot format in lieu of the alternate format.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, beginning with the general election to be held in the year two thousand, the ballot commissioners of any county may choose to publish a facsimile general election ballot, instead of the official list of candidates and issues, for purposes of the last publication required before any general election.

§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 twenty-first 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 the 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 clerk of the county commission and 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 and the names shall be posted at the office where absentee voting is conducted and at the precincts in accordance with section twenty, article one of this chapter.

§3-6-5. Rules and procedures in election other than primaries.

The provisions of article one of this chapter relating to elections generally shall govern and control arrangements
and election officials for the conduct of elections under
this article. The following rules and procedures shall
govern the voting for candidates in general and special
elections:

(a) If the voter desires to vote a straight ticket, or in
other words, for each and every candidate for one party for
whatever office nominated, the voter shall either:

(1) Mark the position designated for a straight ticket in
the manner appropriate to the voting system; or

(2) Mark the voting position for each and every candi-
date of the chosen party in the manner appropriate to the
voting system.

(b) If the voter desires to vote a mixed ticket, or in other
words, for candidates of different parties, the voter shall
either:

(1) Omit marking any straight ticket voting position and
mark, in the manner appropriate to the voting system, the
name of each candidate for whom he or she desires to vote
on whatever ticket the name may be; or

(2) Mark the position designated for a straight ticket for
the party for some of whose candidates he or she desires to
vote and then mark the name of any candidate of any
other party for whom he or she may desire to vote, in
which case the cross mark in the circular space above the
name of the party straight ticket mark will cast his or her
vote for every candidate on the ticket of the party except
for offices for which candidates are marked on other party
tickets and the marks for the candidates will cast a vote
for them; or

(3) Write with ink or other means or affix a sticker or
label or place an ink-stamped impression of the name of
an official write-in candidate for an office for whom he or
she desires to vote in the space designated for write-in
votes for the particular voting system or for paper ballot
systems, write or place the name and office designation in any position on the face of the ballot which makes the intention of the voter clear as to both the office and the candidate chosen.

(c) If in marking either a straight or mixed ticket as above defined, a straight ticket voting position is marked, and also one or more marks are made for candidates on the same ticket for offices for which candidates on other party tickets are not individually marked, the marks before the name of candidate on the ticket so marked shall be treated as surplusage and ignored.

(d) When a voter casts a straight ticket vote and also writes in any name 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.

(e) The secretary of state may proscribe devices for casting write-in votes which would cause mechanical difficulty with voting machines or electronic devices or which would obliterate or deface a paper ballot or any portion thereof, but the secretary of state shall preserve the right to vote by a write-in vote for those candidates who have filed and have been certified as official write-in candidates under the provisions of section four-a of this article.

(f) If the voter marks more names than there are persons to be elected to an office or if, for any reason, it is impossible to determine the voter's choice for an office to be filled, the ballot shall not be counted for the office. The intention of the voter shall be deemed to be clear if the write-in vote cast for an office contains both the first and last name of an official write-in candidate for that office; and if no two official write-in candidates for that office share a first or last name, either the first name or last name alone shall be deemed to express the clear intention of the voter.

(g) Except as otherwise specifically provided in this chapter, no ballot shall be rejected for any technical error
which does not make it impossible to determine the voter's choice.

§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, the 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-
sioner 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 provisional ballots, as determined
according to subsection (a) of this section, any other ballot
found in the ballot box shall be placed in the same enve-
lope 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.

§3-6-7. Ballot irregularities; procedures.

1 If two or more ballots are found folded or rolled together
2 and the names voted for thereon be the same, one of them
3 only shall be counted; but if the names voted for thereon
4 be different, in any particular, neither of them shall be
5 counted except as hereinbefore provided; and in either
6 case, the commissioners of election shall, in writing in ink,
7 place a common number on the ballots and state thereon
8 that they were folded or rolled together when voted. If any
9 ballot be found to contain more than the proper number of
10 names for any office, the ballot shall not be counted as to
11 the office. In any election for state senator, if a person is
12 voted for on any ballot who is not a resident of the proper
13 county, as required by section four, article VI of the
14 constitution, the ballot shall not be counted for the office.
15 Any ballot or part of a ballot from which it is impossible
16 to determine the elector's choice of candidates shall not be
17 counted as to the candidates affected thereby.

§3-6-9. Canvass of returns; declaration of results; recounts;
recordkeeping.

1 (a) The commissioners of the county commission shall be
2 ex officio a board of canvassers and, as such, shall keep in
3 a well-bound book, marked "election record", a complete
4 record of all their proceedings in ascertaining and declar-
5 ing the results of every election in their respective coun-
ties. They shall convene as the canvassing board at the courthouse on the fifth day (Sundays excepted) after every election held in their county, or in any district thereof, and the officers in whose custody the ballots, pollbooks, registration records, tally sheets and certificates have been placed shall lay them before the board for examination. They may, if considered necessary, require the attendance of any of the commissioners, poll clerks or other persons present at the election to appear and testify respecting the election and make other orders as shall seem proper to procure correct returns and ascertain the true results of the election in their county; but in this case all the questions to the witnesses and all the answers thereto and evidence shall be taken down in writing and filed and preserved. All orders made shall be entered upon the record. They may adjourn, from time to time, but no longer than absolutely necessary. When a majority of the commissioners are not present, the meeting shall stand adjourned until the next day and so from day to day, until a quorum is present. All meetings of the commissioners sitting as a board of canvassers shall be open to the public. The board shall proceed to open each sealed package of ballots laid before them and, without unfolding them, count the number in each package and enter the number upon their record. The ballots shall then be again sealed up carefully in a new envelope and each member of the board shall write his or her name across the place where the envelope is sealed. After canvassing the returns of the election, the board shall publicly declare the results of the election; however, they shall not enter an order certifying the election results for a period of forty-eight hours after the declaration.

(b) Within the 48-hour period a candidate voted for at the election may demand the board to open and examine any of the sealed packages of ballots and recount them; but they shall seal the ballots again, along with the envelope above named, and the clerk of the county commission and each member of the board shall write his or
her name across the places where it is sealed and endorse
in ink, on the outside: “Ballots of the election held at
precinct No.____, in the district of ____________, and
county of ____________, on the _______ day of
______.” In computing the 48-hour period as used
in this section, Saturdays, Sundays and legal holidays
shall be excluded: Provided, That at the end of the 48-hour
period, an order shall be entered certifying all election
results except for those offices in which a recount has been
demanded.

(c) If a recount has been demanded, the board shall have
an additional twenty-four hours after the end of the 48-
hour period in which to send notice to all candidates who
filed for the office in which a recount has been demanded
of the date, time and place where the board will convenc
to commence the recount. The notice shall be served under
the provisions of subdivision (d) of this section. The
recount shall be set for no sooner than three days after the
serving of the notice: Provided, That after the notice is
served, candidates so served shall have an additional
twenty-four hours in which to notify the board, in writing,
of their intention to preserve their right to demand a
recount of precincts not requested to be recounted by the
candidate originally requesting a recount of ballots cast:
Provided, however, That there shall be only one recount of
each precinct, regardless of the number of requests for a
recount of any precinct. A demand for the recount of
ballots cast at any precinct may be made during the
recount proceedings only by the candidate originally
requesting the recount and those candidates who notify
the board, pursuant to this subdivision, of their intention
to preserve their right to demand a recount of additional
precincts.

(d) Any sheriff of the county in which the recount is to
occur shall deliver a copy thereof in writing to the candid-
ate in person, or if the candidate is not found, by deliver-
ing the copy at the usual place of abode of the candidate
and giving information of its purport, to the spouse of the candidate or any other person found there who is a member of his or her family and above the age of sixteen years; or if neither the spouse of the candidate nor any other person be found there and the candidate is not found, by leaving the copy posted at the front door of the place of abode. Any sheriff, thereto required, shall serve a notice within his or her county and make return of the manner and time of service; for a failure so to do, he or she shall forfeit twenty dollars. The return shall be evidence of the manner and time of service.

(e) Every candidate who demands a recount shall be required to furnish bond in a reasonable amount with good sufficient surety to guarantee payment of the costs and the expenses of the recount in the event the result of the election is not changed by the recount; but the amount of the bond shall in no case exceed three hundred dollars.

(f) After the board of canvassers has made their certifies and declared the results as hereinafter provided, they shall deposit the sealed packages of ballots, absent voter ballots, registration records, pollbooks, tally sheets and precinct certificates with the clerks of the county commissions and circuit courts from whom they were received, who shall carefully preserve them for twenty-two months: Provided, That the clerk may use these records to update the voter registration records in accordance with subsection (d), section eighteen, article two of this chapter. If there is no contest pending as to any election and their further preservation is not required by any order of a court, the ballots, pollbooks, tally sheets and certificates shall be destroyed by fire or otherwise, without opening the sealed packages of ballots. If there is a contest pending, they shall be destroyed as soon as the contest is ended.

(g) If the result of the election is not changed by the recount, the costs and expenses thereof shall be paid by the party at whose instance the recount was made.
ARTICLE 7. CONTESTED ELECTIONS.

§3-7-1. Contests for state offices and judgeships; procedure.

1 If the election of governor, secretary of state, treasurer, auditor, attorney general, commissioner of agriculture, a judge of the supreme court of appeals or a judge of a circuit court, is contested, the contestant shall give notice, with specifications and affidavit, to the person whose election is contested within ten days after the election is certified and within ten days thereafter the return notice shall be given to the contestant. The parties shall finish taking depositions within forty days after the notice is delivered. The depositions shall be transmitted to the clerk of the House of Delegates, to be delivered by him or her to the joint committee or special court hereinafter provided for. In other respects the regulations contained in this article respecting contests for a seat in the Legislature shall be observed, so far as they are applicable.

§3-7-4. Contests of seats in Legislature; notices and procedure.

1 Any person intending to contest the election of another as senator or delegate shall, within ten days after the election is certified, give him or her notice thereof in writing and a list of the votes he or she will dispute, with the objections to each, and of the votes rejected for which he or she will contend. If the contestant objects to the legality of the election or the qualification of the person returned, the notice shall set forth the facts on which the objection is founded. The person whose election is contested shall, within ten days after receiving the notice, deliver to the contestant a like list of the votes he or she will dispute and of the objection to each, and of the rejected votes he or she will claim; and, if he or she has any objection to the qualification of the contestant, shall specify in the notice the facts on which the objection is founded. Each party shall append to the notice an affidavit that the matters therein set forth, so far as they are stated of his or her knowledge, are true and that, so far as
they are stated on the information of others, he or she believes them to be true. If new facts are discovered by either party after he or she has given notice, he or she may give an additional notice or notices to his or her adversary, with specifications and affidavit as above prescribed.

The notice of contest shall be presented to the proper branch of the Legislature, within ten days after its meeting.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.

(a) Except candidates for party committeemen and committeewomen, in primary and other elections and federal committees required to file under the provisions of U. S. C. §434, all candidates for nomination or election and all persons or organizations of any kind advocating or opposing a nomination, election or defeat of any candidate shall keep records of receipts and expenditures which are made for political purposes. All of the receipts and expenditures are subject to regulation by the provisions of this article. Verified financial statements of the records and expenditures shall be made and filed as public records by all candidates and by their financial agents, representatives or any person acting for and on behalf of any candidate and by the treasurers of all political party committees.

(b) In addition to any other reporting required by the provisions of this chapter, any independent expenditure in the amount of one thousand dollars or more for any statewide, legislative or multicounty judicial candidate or in the amount of five hundred dollars or more for any county office, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, any municipal candidate on a municipal election ballot, which is made after the eleventh day but
more than twelve hours before the day of any election shall be reported, on a form prescribed by the secretary of state, within twenty-four hours after the expenditure is made or debt is incurred for a communication, to the secretary of state by hand-delivery, facsimile or other means to assure receipt by the secretary of state within the 24-hour period.

(c) For purposes of this section, "independent expenditure" means an expenditure made by a person other than a candidate or committee for a communication which expressly advocates the election or defeat of a clearly identified candidate but which is made independently of a candidate's campaign and which has not been made with the cooperation or consent of, or in consultation with, or at the request or suggestion of, any candidate or any of his or her agents or authorized committees. An expenditure which does not meet the criteria for independence established in this subsection is considered a contribution.

(d) Any independent expenditure must include a clear and conspicuous public notice which identifies the name of the person who paid for the expenditure and states that the communication is not authorized by the candidate or his or her committee.

§3-8-4. Treasurers and financial agents; written designation requirements; "person" and "financial agent" defined.

(a) No person shall act as the treasurer of any political committee, or as financial agent for any candidate for nomination or election to any office to be filled by the voters of the entire state, or candidates for nomination or election for any office, encompassing an election district larger than a county, or candidates for nomination for legislative office, or any person or organization advocating or opposing the nomination, election or defeat of any candidate, encompassing an election district larger than a county, unless a written statement designating him or her as the treasurer or financial agent is filed with the secre-
of state at least twenty-eight days before the election at which he or she is to act and must be received before midnight, eastern standard time, of that day or if mailed, shall be postmarked before that hour: Provided, That a change of treasurer may be made at any time by filing a written statement with the secretary of state.

(b) No person shall act as treasurer of any committee or as financial agent for any candidate to be nominated or elected by the voters of a county or a district therein, except legislative candidates, or as the treasurer or financial agent for a candidate for the nomination or election to any other office, unless a written statement designating him or her as the treasurer or financial agent is filed with the clerk of the county commission at least twenty-eight days before the election at which he or she is to act and must be received before midnight, eastern standard time, of that day or if mailed, shall be postmarked before that hour: Provided, That a change of treasurer may be made at any time by filing a written statement with the clerk of the county commission.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, a filing designating a treasurer or financial agent for a state or county political executive committee may be made anytime before the committee either accepts or spends funds on behalf of the committee. Once a designation is made by a state or county political executive committee, no additional designations are required under this section until a successor treasurer or financial agent is designated. A state or county political executive committee may terminate a designation made pursuant to this section by making a written request to terminate the designation and by stating in the request that the committee has no funds remaining in the committee’s account. This written request shall be made with either the secretary of state or the clerk of the county commission as provided by subsections (a) and (b) of this section.
(d) As used in this article:

The term "person" means an individual, partnership, committee, association, corporation, and any other organization or group of persons; and

The term "financial agent" means any person acting for and by himself or herself, or any two or more natural persons acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party or principle at any election, or any proposition submitted to a vote at a public election.

§3-8-5. Detailed accounts and verified financial statements required.

(a) Every candidate, financial agent, person and association of persons, organization of any kind, including every corporation, directly or indirectly, supporting a political committee established pursuant to paragraph (C), subdivision (1), subsection (b), section eight of this article or engaging in other activities permitted by this section and also including the treasurer or equivalent officer of the association or organization, advocating or opposing the nomination, election or defeat of any candidate, and the treasurer of every political party committee shall keep detailed accounts of every sum of money or other thing of value received by him or her, including all loans of money or things of value, and of all expenditures and disbursements made, liabilities incurred, by the candidate, financial agent, person, association or organization or committee, for political purposes, or by any of the officers or members of the committee, or any person acting under its authority or on its behalf.

(b) Every person or association of persons required to keep detailed accounts under this section shall file with the officers hereinafter prescribed a detailed itemized
sworn statement, according to the following provisions and times:

(1) On the last Saturday in March or within six days thereafter, and annually whenever the total of all financial transactions relating to an election exceed five hundred dollars a statement which shall include all financial transactions which have taken place by the date of that statement, subsequent to any previous statement filed within the previous five years under this section;

(2) Not less than ten nor more than seventeen days preceding each primary or other election, a statement which shall include all financial transactions which have taken place by the date of the statement, subsequent to the previous statement, if any;

(3) Not less than twenty-five nor more than thirty-one days after each primary or other election, a statement which shall include all financial transactions which have taken place by the date of the statement, subsequent to the previous statement; and

(4) On the first Saturday in September or within six days thereafter, preceding the general election day whenever the total of all financial transactions relating to an election exceed five hundred dollars or whenever any loans are outstanding, a statement which shall include all financial transactions which have taken place by the date of the statement, subsequent to the previous statement.

(c) Every person who shall announce as a write-in candidate for any elective office and his or her financial agent or election organization of any kind shall comply with all of the requirements of this section after public announcement of the person's candidacy has been made.

(d) For purposes of this section, the term "financial transactions" includes all contributions or loans received and all repayments of loans or expenditures made to promote the candidacy of any person by any candidate or
§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

(a) No person may publish, issue or circulate, or cause to be published, issued or circulated, any anonymous letter, circular, placard, radio or television advertisement or other publication expressly advocating the election or defeat of a clearly identified candidate.

(b) No owner, publisher, editor or employee of a newspaper or other periodical may insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which tends to influence the voting at any election, unless directly designating it as a paid advertisement and stating the name of the person authorizing its publication and the candidate in whose behalf it is published.

(c) No person may, in any room or building occupied for the discharge of official duties by any officer or employee of the state or a political subdivision of the state, solicit orally or by written communication delivered within the room or building, or in any other manner, any contribution of money or other thing of value for any party or political purpose, from any postmaster or any other officer or employee of the federal government, or officer or employee of the state, or a political subdivision of the state. No officer, agent, clerk or employee of the federal government, or of this state, or any political subdivision of the state, who may have charge or control of any building, office or room, occupied for any official purpose, may knowingly permit any person to enter any building, office or room, occupied for any official purpose for the purpose of soliciting or receiving any political assessments from, or
delivering or giving written solicitations for, or any notice of, any political assessments to, any officer or employee of the state, or a political subdivision of the state.

(d) Except as provided in section eight of this article, no person entering into any contract with the state or its subdivisions, or any department or agency of the state, either for rendition of personal services or furnishing any material, supplies or equipment or selling any land or building to the state, or its subdivisions, or any department or agency of the state, if payment for the performance of the contract or payment for the material, supplies, equipment, land or building is to be made, in whole or in part, from public funds may, during the period of negotiation for or performance under the contract or furnishing of materials, supplies, equipment, land or buildings, directly or indirectly, make any contribution to any political party, committee or candidate for public office or to any person for political purposes or use, nor may any person or firm solicit any contributions for any purpose during any period.

(e) No person may, directly or indirectly, promise any employment, position, work, compensation or other benefit provided for, or made possible, in whole or in part, by act of the Legislature, to any person as consideration, favor or reward for any political activity for the support of or opposition to any candidate, or any political party in any election.

(f) No person may, directly or indirectly, make any contribution in excess of the value of one thousand dollars in connection with any campaign for nomination or election to or on behalf of any statewide or national elective office, or in excess of the value of one thousand dollars, in connection with any other campaign for nomination or election to or on behalf of any other elective office in the state or any of its subdivisions, or in connection with or on behalf of any committee or other organization or person engaged in furthering, advancing or advo-
cating the nomination or election of any candidate for any
of the offices.

(g) (1) Notwithstanding the provisions of subsection (f)
of this section to the contrary, the aggregate contributions
made to a state party executive committee or state party
legislative caucus committee are to be permitted only
pursuant to the limitations imposed by the provisions of
this subsection.

(2) No person may, directly or indirectly, make contribu-
tions to a state party executive committee or state party
legislative caucus committee which, in the aggregate,
exceed the value of one thousand dollars in any calendar
year.

(h) The limitations on contributions contained in this
section do not apply to transfers between and among a
state party executive committee or a state party's legisla-
tive caucus political committee from national committees
of the same political party: Provided, That transfers
permitted by this subsection may not exceed fifty thou-
sand dollars in the aggregate in any calendar year to any
state party executive committee or state party legislative
caucus political committee: Provided, however, That the
moneys transferred may only be used for voter registration
and get-out-the-vote activities of the state committees.

(i) No person may solicit any contribution from any
nonelective salaried employee of the state government or
of any of its subdivisions or coerce or intimidate any
nonelective salaried employee into making a contribution.
No person may coerce or intimidate any nonsalaried
employee of the state government or any of its subdivi-
sions into engaging in any form of political activity. The
provisions of this subsection may not be construed to
prevent any employee from making a contribution or from
engaging in political activity voluntarily, without coer-
cion, intimidation or solicitation.
(j) No person may solicit a contribution from any other person without informing the other person at the time of the solicitation of the amount of any commission, remuneration or other compensation that the solicitor or any other person will receive or expect to receive as a direct result of the contribution being successfully collected. Nothing in this subsection may be construed to apply to solicitations of contributions made by any person serving as an unpaid volunteer.

(k) No person may place any letter, circular, flyer, advertisement, election paraphernalia, solicitation material or other printed or published item tending to influence voting at any election in a roadside receptacle unless it is:
(1) Approved for placement into a roadside receptacle by the business or entity owning the receptacle; and (2) contains a written acknowledgment of the approval. This subdivision does not apply to any printed material contained in a newspaper or periodical published or distributed by the owner of the receptacle. The term “roadside receptacle” means any container placed by a newspaper or periodical business or entity to facilitate home or personal delivery of a designated newspaper or periodical to its customers.

(l) Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in a regional or county jail for not more than one year, or, in the discretion of the court, be subject to both fine and confinement.

ARTICLE 10. FILLING VACANCIES.

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

Any vacancy in the office of county commissioner or clerk of county commission shall be filled by the county commission of the county, unless the number of vacancies in a county commission deprive that body of a quorum, in
which case the governor of the state shall fill any vacancy in the county commission necessary to create a quorum thereof. Persons appointed shall be of the same political party as the officeholder vacating the office and shall continue in office until the next general election is certified, or until the completion of the term if the term ends on the thirty-first day of December following the next general election: Provided, That in the event a quorum of the county commission cannot agree upon a person to fill a vacancy in the office of county commissioner it shall be the mandatory, nondiscretionary duty of each county commissioner, within sixty days from the date the vacancy occurs, to submit in person to the chief judge of the circuit court of the county, the name of one person who is a member of the same political party as was the person whose vacancy is being filled and was such member for at least one year next preceding the filling of the vacancy and who is legally qualified and willing to fill the vacancy. The judge shall thereupon, in the presence of the quorum of the county commission, cause each name to be written on a separate piece of paper, shall fold or roll up the pieces of paper so as to resemble each other and so that the name written thereon shall not be visible on the outside, and shall deposit the pieces of paper in a box from which one of the county commissioners, selected by lot under the supervision of the judge, shall, in the presence of each other and the judge, draw one of the names. The person whose name is so drawn shall be the county commission's choice to fill the vacancy. The circuit court shall have jurisdiction to compel compliance with the provisions of this proviso.

Notice of the election shall be given by order of the county commission and published as prescribed in section six of this article. Nomination of candidates to fill the office for an unexpired term in the office of county commissioner or clerk of the county commission shall be made in the manner prescribed for making nominations to fill a vacancy in the office of the clerk of the circuit court.
In the event that the election for an unexpired term is held at the same time as the election for a full term for county commissioner, the full term shall be counted first and the unexpired term shall be counted second. If the candidate with the highest number of votes for the unexpired term resides in the same magisterial district as the candidate with the highest number of votes for the full term, the candidate for the full term shall be seated. The candidate with the next highest number of votes for the unexpired term residing in a different magisterial district shall be seated for the unexpired term.

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

Any vacancy occurring in the office of prosecuting attorney, sheriff, assessor or county surveyor shall be filled by the county commission by appointment of a person of the same political party as the officeholder vacating the office. The appointed person shall hold the office until the next general election is certified, or until the completion of the term if the term ends on the thirty-first day of December following the next general election. Notice of an election to fill a vacancy in any of the offices named in this section shall be given by the county commission, or by the president thereof in vacation, and published or posted in the manner prescribed in section six of this article. Nomination of candidates to fill any vacancy shall be made in the manner prescribed in section six of this article for nominating candidates to fill a vacancy in the office of the clerk of the circuit court.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 6. ANNEXATION.

PART II. ANNEXATION BY ELECTION.

§8-6-2. Petition for annexation.

(a) Five percent or more of the freeholders of a municipality desiring to have territory annexed thereto may file
a petition in writing with the governing body thereof setting forth the change proposed in the metes and bounds of the municipality and asking that a vote be taken upon the proposed change. The petition shall be verified and shall be accompanied by an accurate survey map showing the territory to be annexed to the corporate limits by the proposed change.

(b) The petitioners shall obtain a surety bond in an amount set by the governing body sufficient to cover the cost of the election. The bond shall be forfeited if a majority of the votes cast are against the proposed annexation.

(c) The governing body shall, upon receipt of the bond, order a vote of the qualified voters of the municipality to be taken upon the proposed annexation on a date and at a time and place to be named in the order.

(d) The governing body shall, at the same time, order a vote of all of the qualified voters of the additional territory and of all of the freeholders of the additional territory whether they reside or have a place of business therein or not, to be taken upon the question on the same day at some convenient place in or near the additional territory.

(e) The governing body shall cause the order for the election to be published, at the cost of the municipality, as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area is the municipality and the additional territory. The first publication must be at least fourteen days prior to the date upon which the vote is to be taken. The order for the election shall contain an accurate description by metes and bounds of the additional territory proposed to be annexed to the corporate limits by the proposed change, a summary of the municipality's plan for providing services to the additional territory and, if practicable, shall also contain a popular description of the additional territory.
(f) The election shall be held, superintended and conducted and the results thereof ascertained, certified, returned and canvassed in the same manner by the same individuals as elections for municipal officers. The election is reviewable by the circuit court of the county in which the municipality or the major portion thereof, including the area proposed to be annexed, is located. The order may be reviewed by the circuit court as an order of a county commission ordering an election may be reviewed under section sixteen, article five of this chapter.

(g) The ballots, or ballot labels where voting machines are used, shall have written or printed on them the words:

☐ For Annexation

☐ Against Annexation

(h) Any freeholder which is a firm or corporation may vote by its manager, president or executive officer duly designated in writing by the firm or corporation.

(i) An individual who is a qualified voter and freeholder of the municipality or the additional territory shall be entitled to vote only once.

(j) For purposes of this section, the term “qualified voter of the additional territory” includes a firm or corporation in the additional territory regardless of whether the firm or corporation is a freeholder. A firm or corporation may vote by its manager, president, or executive officer duly designated in writing by the firm or corporation. In any instance where a freeholder leases or rents real property to a firm or corporation the freeholder and the firm or corporation shall determine which entity will be entitled to vote in the annexation election.

(k) When an election is held in any municipality in accordance with the provisions of this section, another election relating to the same proposed change or any part thereof shall not be held for a period of one year.
(l) If a majority of all of the legal votes cast in the municipality and a majority of all the legal votes cast in the territory are in favor of the proposed annexation, then the governing body shall proceed as specified in the immediately succeeding section of this article.
Enr. S. B. No. 648] 138

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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 1st Day of April, 2003.

Governor