WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

SENATE BILL NO. 449

(By Senator Kessler, et al)

PASSED February 23, 2004

In Effect from Passage
ENROLLED

Senate Bill No. 449

(BY SENATORS KESSLER, CALDWELL, FANNING, HUNTER, JENKINS, MINARD, OLIVERIO, ROSS, ROWE, SNYDER, WHITE, DEEM, HARRISON, McKENZIE, SMITH AND WEEKS)

[Passed February 23, 2004; in effect from passage.]

AN ACT to amend and reenact §3-2-10 of the code of West Virginia, 1931, as amended; to amend and reenact §3-4-3 of said code; to amend and reenact §3-4A-3 of said code; to amend and reenact §3-5-8, §3-5-13 and §3-5-13a of said code; and to amend and reenact §3-8-7 of said code, all relating to elections generally; correcting United States code reference; authorizing county commissions to discontinue use of voting machines and replace them with other systems meeting certain federal requirements under certain circumstances; reducing the filing fee for presidential and vice presidential candidates; clarifying that the filing fee for certain county offices is based only on the annual salary of the position; adding family court judge to list of offices on county ballot; and removing the requirement that ballots be printed with space for ballot commissioners' signatures.

Be it enacted by the Legislature of West Virginia:
That §3-2-10 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §3-4-3 of said code be amended and reenacted; that §3-4A-3 of said code be amended and reenacted; that §3-5-8, §3-5-13 and §3-5-13a of said code be amended and reenacted; and that §3-8-7 of said code be amended and reenacted, all to read as follows:

§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 municipality 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) of this section, may cast a provisional ballot.

(i) Subsection (g) of this section 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) of this subdivision 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 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.

§ 3-4-3. Procedures for terminating use of voting machines.

The county commission may discontinue the use of voting machines and replace them with a different voting system meeting the requirements of “The Help America Vote Act of 2002”, 42 U. S. C. 15302, et seq., six months prior to a primary or general election by majority vote of the commission.

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

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

By a majority of the members of the county commission voting to adopt the same at a public meeting called for that purpose, with notice thereof published as a Class II-0 legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code. The publication area for such publication shall be the county involved.

§3-5-8. Filing fees and their disposition.

Every person who becomes a candidate for nomination for or election to office in any primary election shall, at the time of filing the certificate of announcement as required in this article, pay a filing fee as follows:

(a) A candidate for president of the United States, for vice president of the United States, for United States senator, for member of the United States House of Representatives, for governor and for all other state elective offices shall pay a fee equivalent to one percent of the annual salary of the office for which the candidate announces: Provided, That the filing fee for any candidate for president or vice president of the United States shall not exceed two thousand five hundred dollars commencing with the two thousand four filing period;

(b) A candidate for the office of judge of a circuit court and judge of a family court shall pay a fee equivalent to one percent of the total annual salary of the office for which the candidate announces;

(c) A candidate for member of the House of Delegates shall pay a fee of one-half percent of the total annual salary of the office and a candidate for state senator shall pay a fee of one percent of the total annual salary of the office;

(d) A candidate for sheriff, prosecuting attorney, circuit clerk, county clerk, assessor, member of the county commission and magistrate shall pay a fee equivalent to one percent of the annual salary, excluding any additional compensation or commission of the office for which the candidate announces. A candidate for county board of education shall pay a fee of twenty-five dollars. A candidate for any other county office shall pay a fee of ten dollars;
(e) Delegates to the national convention of any political party shall pay the following filing fees:

A candidate for delegate-at-large shall pay a fee of twenty dollars; and a candidate for delegate from a congressional district shall pay a fee of ten dollars;

(f) Candidates for members of political executive committees and other political committees shall pay the following filing fees:

A candidate for member of a state executive committee of any political party shall pay a fee of twenty dollars; a candidate for member of a county executive committee of any political party shall pay a fee of ten dollars; and a candidate for member of a congressional, senatorial or delegate district committee of any political party shall pay a fee of five dollars.

Candidates filing for an office to be filled by the voters of one county shall pay the filing fee to the clerk of the circuit court and candidates filing for an office to be filled by the voters of more than one county shall pay the filing fee to the secretary of state at the time of filing their certificates of announcement and no certificate of announcement shall be received until the filing fee is paid.

All moneys received by such clerk from such fees shall be credited to the general county fund. Moneys received by the secretary of state from fees paid by candidates for offices to be filled by all the voters of the state shall be deposited in a special fund for that purpose and shall be apportioned and paid by him to the several counties on the basis of population and that received from candidates from a district or judicial circuit of more than one county shall be apportioned to the counties comprising the district or judicial circuit in like manner. When such moneys are received by sheriffs, it shall be credited to the general county fund.

§3-5-13. Form and contents of ballots and ballot labels.
The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

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

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

(2) For voting machines, electronic voting devices and any ballot tabulated by electronic means, the offices are to appear in the same sequence as prescribed in section thirteen-a of this article and under the same headings as prescribed in subsection (a) of this section. The number of
The title of each office is to be separated from preceding offices or candidates by a line and is to be printed in bold type no smaller than eight point. Below the office is to be printed the number of the district, if any, the number of the division, if any, and the words “Vote for _______” with the number to be nominated or elected or “Vote For Not More Than _______” in multicandidate elections. For offices in which there are limitations relating to the number of candidates which may be nominated, elected or appointed to or hold office at one time from a political subdivision within the district or county in which they are elected, there is to be a clear explanation of the limitation, as prescribed by the secretary of state, printed in bold type immediately preceding the names of the candidates for those offices on the ballot in every voting system. For counties in which the number of county commissioners exceeds three and the total number of members of the county commission is equal to the number of magisterial districts within the county, the office of county commission is to be listed separately for each district to be filled with the name of the magisterial district and the words “Vote for One” printed below the name of the office.

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

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

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

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

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

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

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

(1) On the fourth Tuesday following the close of the candidate filing, beginning at nine o'clock a.m., a drawing by lot shall be conducted in the office of the clerk of the circuit court in each county. Notice of the drawing shall be given on the form for the certificate of announcement and no further notice shall be required. The clerk of the circuit court shall superintend and conduct the drawing and the method of conducting the drawing shall be prescribed by the secretary of state.

(2) Except as provided herein, the position of each candidate within each office division shall be determined by the position drawn for that candidate individually:

Provided, That if fewer candidates file for an office division than the total number to be nominated or elected, the vacant positions shall appear following the names of all candidates for the office.

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

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

§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

(a) Any candidate, financial agent or treasurer of a political party committee who fails to file a sworn, item-
ized statement within the time limitations specified in this article or who willfully files a grossly incomplete or grossly inaccurate statement shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars or imprisoned in the county jail for not more than one year, or both, in the discretion of the court. Forty days after any such primary or other election, the secretary of state, or county clerk, or municipal recorder, as the case may be, shall give notice of any failure to file such sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any candidate, financial agent or treasurer of a political party committee and forward copies of any grossly incomplete or grossly inaccurate statement to the prosecuting attorney of the county where such candidate, agent or treasurer resides.

(b) (1) Any candidate, financial agent or treasurer of a political party committee who fails to file a sworn, itemized statement as provided in this article or who files a grossly incomplete or grossly inaccurate statement may be assessed a civil penalty by the secretary of state of twenty-five dollars a day for each day after the due date the statement is delinquent, grossly incomplete or grossly inaccurate. Forty days after any such primary or other election the county clerk shall give notice to the secretary of state of any failure to file such sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any candidate, financial agent or treasurer of a political party committee and forward copies of such delinquent, incomplete or inaccurate statements to the secretary of state.

(2) A civil penalty assessed pursuant to the provisions of this section shall be payable to the state of West Virginia and is collectable in any manner authorized by law for the collection of debts.

(3) The secretary of state may negotiate and enter into settlement agreements for the payment of civil penalties
assessed as a result of the filing of a delinquent, grossly incomplete or inaccurate statement.

(4) The secretary of state and county clerk may review and audit any sworn statement required to be filed pursuant to the provisions of this article. The state election commission shall propose legislative rule for promulgation, in accordance with the provisions of chapter twenty-nine-a of this code, to establish procedures for the assessment of civil penalties as provided in this section.

(c) No candidate nominated at a primary election who has failed to file a sworn statement, as required by the provisions of this article, shall have his name placed on the official ballot for the ensuing election, unless there has been filed by or on behalf of such candidate, or by his financial agent, if any, the financial statement relating to nominations required by this article. It is unlawful to issue a commission or certificate of election, or to administer the oath of office, to any person elected to any public office who has failed to file a sworn statement as required by the provisions of this article and no such person may enter upon the duties of his office until he has filed such statement, nor may he receive any salary or emolument for any period prior to the filing of such statement.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 2nd Day of March, 2004.

Governor