WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 669

(By Senator HUNTER, et al)

PASSED April 9, 2005

In Effect 90 Days After Passage
AN ACT to amend and reenact §3-1-19, §3-1-20, §3-1-21, §3-1-21a, §3-1-24 and §3-1-25 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-3-2 and §3-3-11 of said code; to amend and reenact §3-4-10, §3-4-12 and §3-4-12a of said code; to amend and reenact §3-4A-12, §3-4A-13 and §3-4A-13a of said code; to amend and reenact §3-5-7, §3-5-8, §3-5-8a, §3-5-9, §3-5-11, §3-5-12, §3-5-13, §3-5-13a, §3-5-18, §3-5-19, §3-5-23 and §3-5-24 of said code; to amend and reenact §3-6-4 and §3-6-4a of said code; to amend and reenact §3-9-18 of said code; and to amend and reenact §3-10-6 of said code, all relating to the regulation and control of elections; transferring certain election duties from the circuit clerk to the clerk of the county commission; removing unconstitutional provisions regarding nominating petitions; providing that the county clerk shall assist the Secretary of State in determining the validity of nominating petitions; and removing the prohibition on a person signing or joining in any petition or certificate nominating any candidate for office from voting in a primary election.
Be it enacted by the Legislature of West Virginia:

That §3-1-19, §3-1-20, §3-1-21, §3-1-21a, §3-1-24 and §3-1-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §3-3-2 and §3-3-11 of said code be amended and reenacted; that §3-4-10, §3-4-12 and §3-4-12a of said code be amended and reenacted; that §3-4A-12, §3-4A-13 and §3-4A-13a of said code be amended and reenacted; that §3-5-7, §3-5-8, §3-5-8a, §3-5-9, §3-5-11, §3-5-12, §3-5-13a, §3-5-18, §3-5-19, §3-5-23 and §3-5-24 of said code be amended and reenacted; that §3-6-4 and §3-6-4a of said code be amended and reenacted; and §3-9-18 of said code be amended and reenacted; and that §3-10-6 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-19. Ballot commissioners; selection; duties generally; vacancies.

In each county in the state, the clerk of the county commission while holding office, and two persons appointed by him or her, one from each of the two political parties which cast the largest and second largest number of votes in the state at the last preceding general election, shall constitute a board of ballot commissioners. The clerk shall be chairman. It shall be the duty of the clerk to notify the chairman of the respective county executive committees of the two parties, at least five days before making appointments, the time and place of making the appointments. If at any time after notice is given, and before or on the day so fixed for making appointments, the chairman of each of the committees shall designate, in writing, a member of such party as ballot commissioner. Each designee shall be appointed if he or she meets the qualifications of a voter. Ballot commissioners shall be appointed between the fifteenth and thirtieth days of January in each year in which a general election is to be held, for a term of two years beginning on the first day of February next ensuing. They shall perform the duties of ballot commissioners at all general, special and primary
§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 instruction 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 clerk of the county commission shall post the cards of general
information, a list of official write-in candidates and sample ballots within the area where absentee voting is conducted.

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

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

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

(1) The Secretary of State, for any statewide special election ordered by the Legislature;

(2) The board of ballot commissioners, for any county-wide special election ordered by the county commission;

(3) The Board of Education, for any special levy or bond election ordered by the Board of Education; or

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

(c) When paper ballots are used, the total number of regular official ballots printed shall equal one and one-twentieth times the number of registered voters eligible to vote that ballot. The clerk of the county commission shall determine the number of absentee official ballots.

(d) The number of regular official ballots packaged for each precinct shall equal the number of registered voters of the precinct. The remaining regular official ballots
shall be packaged and delivered to the clerk of the county
commission 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 immedi-
ately 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 absen-
tee voting in all voting systems shall be delivered to the
clerk of the county commission of the appropriate county
not later than the forty-second day before the election. All
official ballots in paper ballot systems shall be delivered
to the clerk of the county commission of the appropriate
county not later than twenty-eight days before the elec-
tion.

(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.

§3-1-21a. Vendors authorized to print ballots; eligibility; appli-
cation and certification; denial, suspension and
revocation of authorization; appeal.

(a) The printing of ballots for any election to be held
pursuant to the provisions of this chapter shall be con-
tracted for with a vendor authorized in accordance with
the provisions of this section.

(b) Any vendor authorized to do business in West
Virginia and in good standing may apply for a certificate
of authorization to print ballots for elections in this state:
Provided, That any individual, partnership, association or
corporation who does not qualify as a resident vendor
pursuant to the provisions of section thirty-seven-a, article
three, chapter five-a of this code or who prints the ballots
in a state which prohibits that state or any of its political
subdivisions from contracting with West Virginia resident
vendors for the printing of ballots or which prohibits the
printing of ballots outside of such state, is not eligible to
obtain a certificate of authorization.

(c) (1) Every vendor desiring to print ballots for elections
held pursuant to the provisions of this chapter shall, prior
to the execution of any contract for the printing of ballots
with any state, county, or municipal government, obtain a
certificate of authorization to print ballots.

(2) A certificate of authorization may be obtained by
application to the Secretary of State, upon a form pre-
scribed by the Secretary of State. The form shall include
a statement that all printing, packaging and delivery
specifications for ballots set forth in this chapter will be
substantially met, and that the vendor applying for
certification is eligible in accordance with the provisions
of this section.

(3) Upon receipt of the completed application, the
Secretary of State shall issue a certificate of authorization
to print ballots, which shall remain in effect for two years
from the date of issuance and may be renewed upon
application therefor: Provided, That the Secretary of
State may deny the application to issue or renew the
certificate of authorization, or may suspend or revoke the
certificate of authorization upon a determination that the
vendor has not substantially complied with the printing,
packaging and delivery specifications in the printing of ballots for any state, county or municipal election, or that the vendor is not eligible or is no longer eligible to print ballots pursuant to the provisions of this section. The Secretary of State shall give written notice of any such determination by certified mail, return receipt requested, to the vendor setting forth the reason for the suspension, revocation or the denial of the application or the denial of the renewal thereof. The applicant may, within sixty days of the receipt of such denial, file a written appeal with the State Election Commission. The State Election Commission shall promulgate rules establishing a hearing process for such appeals.

(d) On or before the second Monday of January of each year, the Secretary of State shall provide a list of all vendors authorized to print ballots for state, county and municipal elections to the clerk of each county commission of this state.

§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 office of the clerk of the county commission 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 clerk shall take a receipt for the respective materials delivered to the commissioners of election or poll clerks and shall file the receipt in his or her office. It shall be the duty of the commissioners or poll clerks to receive the supplies and materials from the clerk 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.
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19  (c) Ballots shall be delivered in sealed packages with
20  seals unbroken. For general and special elections the
21  delivered ballots shall not be in excess of one and one-
22  twentieth times the number of registered voters in the
23  precinct. For primary elections the ballots for each party
24  shall be in a separately sealed package containing not
25  more than one and one-twentieth times the number of
26  registered voters of each party in the election precinct.
27  (d) For primary elections one copy of the poll books,
28  including the written or printed forms for oaths of com-
29  missioners of election and poll clerks, shall be supplied at
30  each voting precinct for each political party appearing on
31  the primary ballot.
32  (e) There shall be two ballot boxes for each election
33  precinct for which a receiving and a counting board of
34  election commissioners have been appointed.

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

1  In case any commissioner of election or poll clerk fails to
2  appear at the offices of the clerk of the county commission
3  by the close of the clerk's office on the day prior to any
4  election, the board of ballot commissioners, the chairman
5  or the clerk of the county commission shall forthwith
6  dispatch a special messenger to the commissioners of
7  election of each respective precinct with the ballots,
8  registration records, ballot boxes, poll books and other
9  supplies for the precinct. The messenger, if not a county
10  employee, shall be allowed five dollars for this service.
11  The messenger shall also receive mileage up to the rate of
12  reimbursement authorized by the travel management rule
13  of the Department of Administration for each mile neces-
14  sarily traveled in the performance of his or her services.
15  The messenger shall promptly report to the clerk of county
16  commission and file with the clerk the receipts of the
17  person to whom he or she delivered the ballots and other
18  supplies and his or her affidavit stating when and to whom
19  he or she delivered them.
ARTICLE 3. VOTING BY ABSENTEES.

§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; 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 “clerk of the county commission” 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 applica-
tion 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.

§3-3-11. 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 in any
specific election law in which case the lesser number of
days applies, the clerks of the county commissions 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, accep-
tance or rejection of any measure, proposition or other
public question to be voted on by the voters, are to be
prepared and printed under the direction of the board of
ballot commissioners constituted as provided in article one
of this chapter. The several county boards of ballot
commissioners shall prepare and have printed, in the number they may determine, absent voters’ ballots that are to be printed under their directions as provided in this chapter and those ballots are to be delivered to the clerk of the county commission of the county not less than forty-two days before the day of the election at which they are to be used.

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

ARTICLE 4. VOTING MACHINES.

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

(a) The ballot commissioners of any county in which voting machines are to be used in any election shall cause to be printed for use in the election the ballot labels for the voting machines and paper ballots for absentee voting, voting by persons unable to use the voting machine and 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 candidates for each office indicated must be placed on the ballot for the primary election as nearly as possible according to the provisions of sections thirteen and thirteen-a, article five of this chapter and for the general election according to the provisions of section two, article six of this chapter: Provided, That the staggering of the names of candidates in multicandidate races and the instructions to straight ticket voters prescribed by section two, article six of this chapter shall appear on paper ballots but shall not appear on ballot labels for voting machines which mechanically control crossover voting.

(c) Each question to be voted on must be placed at the end of the ballot and must be printed according to the provisions of the laws and rules 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 county commission at least twenty-eight days prior to the day of the election. The clerk of the county commission shall determine the number of paper ballots needed for absentee voting and to supply the precincts for provisional 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 county commission 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 county commission shall examine them for accuracy, assure that the appropriate ballots and ballot labels are designated for each voting precinct and 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.

§3-4-12. Inspection of machines; duties of county commission,
ballot commissioners and election commissioners;
keys and records relating to machines.

When the clerk of the county commission has completed
the preparation of the voting machines, as provided in
section eleven of this article, and not later than seven days
before the day of the election, he or she shall notify the
members of the county commission and the ballot commis-
ioners that the machines are ready for use. Thereupon the
members of the county commission and the ballot commis-
ioners shall convene at the office of the clerk, or at such
other place wherein the voting machines are stored, not
later than five days before the day of the election, and
shall examine the machines to determine whether the
requirements of this article have been met. Any candidate,
and one representative of each political party having
candidates to be voted on at the election, may be present
during the examination. If the machines are found to be
in proper order, the members of the county commission
and the ballot commissioners shall endorse their approval
in the book in which the clerk entered the numbers of the
machines opposite the numbers of the precincts. The clerk
shall then deliver the keys to the voting machines to the
ballot commissioners who shall give a receipt for the keys, which shall contain identification of such keys. Not later than one day before the election the election commissioner of each precinct, who shall have been previously designated by the ballot commissioners, shall attend at the office of the clerk of the county commission to receive the key or keys to the device covering the registering counters and such other keys as may be necessary for the operation of the machine in registering votes, and to receive the other necessary election records, books and supplies required by law. The election commissioners shall receive the per diem mileage rate prescribed by law for this service. The election commissioners shall give the ballot commissioners a receipt for the keys, records, books and supplies. The receipt shall contain identification of the keys. The master key and all other keys shall remain in the possession of the clerk of the county commission.

§3-4-12a. Supplies by special messenger.

In case any commissioner of election shall fail to appear at the offices of the clerk of the county commission by the close of the clerk's office on the day prior to any election, the board of ballot commissioners, the chairman thereof shall cause all necessary election records, books and supplies to be delivered by special messenger in the same manner and under the same terms and conditions as is provided for the dispatch of the special messenger under the provisions of section twenty-five, article one of this chapter.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-12. Ballot label arrangement in vote recording devices; sealing of devices; record of identifying numbers.

In counties using electronic voting systems utilizing vote recording devices:

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

(2) The total number of ballot cards printed and the
number packaged for each precinct and the requirements
for ballot colors and packaging are to conform as nearly as
possible to the requirements for paper ballots. Official
ballot cards printed and packaged for the various pre-
cincts are to be delivered to the clerk of the county com-
mission at least twenty-eight days prior to the election.

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

(4) The clerk of the county commission shall retain the
remainder of the ballot labels for each machine for use in
an emergency.

(5) The clerk of the county commission shall seal the vote
recording devices so as to prevent tampering with ballot
labels, and enter in an appropriate book, opposite the
number of each precinct, the identifying or distinguishing
number of the specific vote recording device or devices to
be used in that precinct.

§3-4A-13. Inspection of ballots and vote recording devices;
duties of county commission, ballot commissioners
and election commissioners; records relating to
ballots and vote recording devices; receipt of
election materials by ballot commissioners.
When the clerk of the county commission has completed the preparation of the ballots and vote recording devices as provided in sections eleven, eleven-a and twelve of this article and as provided in section twenty-one, article one of this chapter, and not later than seven days before the day of the election, he or she shall notify the members of the county commission and the ballot commissioners that the ballots and devices, where applicable, are ready for use. Thereupon the members of the county commission and the ballot commissioners shall convene at the office of the clerk or at such other place wherein the vote recording devices, where applicable, and ballots are stored, not later than five days before the day of the election, and shall inspect the devices and the ballots to determine whether the requirements of this article have been met. Notice of the place and time of such inspection shall be published, no less than three days prior thereto, as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county involved. Any candidate and one representative of each political party on the ballot may be present during such examination. If the devices, where applicable, and ballots are found to be in proper order, the members of the county commission and the ballot commissioners shall, where applicable, endorse their approval in the book in which the clerk entered the numbers of the devices opposite the numbers of the precincts. The vote recording devices and the ballots shall then be secured in double lock rooms. The clerk and the president or president pro tempore of the county commission shall each have a key. The rooms shall be unlocked only in their presence and only for the removal of the devices, where applicable, and the ballots for transportation to the polls. Upon such removal of the devices and ballots, the clerk and president or president pro tempore of the county commission shall certify in writing signed by them that the devices, where applicable, and packages of ballots were found to be sealed when removed for transportation to the polls.
Not later than one day before the election the election commissioner of each precinct who shall have been previously designated by the ballot commissioners, shall attend at the office of the clerk of the county commission to receive the necessary election records, books and supplies required by law. The election commissioners shall receive the per diem mileage rate prescribed by law for this service. The election commissioners shall give the ballot commissioners a sequentially numbered written receipt, on a printed form, provided by the clerk of the county commission, for such records, books and supplies. The receipt shall be prepared in duplicate. One copy of the receipt shall remain with the clerk of the county commission and one copy shall be delivered to the president or president pro tempore of the county commission.

§3-4A-13a. Supplies by special messenger.

In case any commissioner of election shall fail to appear at the offices of the clerk of the county commission by the close of the clerk’s office on the day prior to any election, the board of ballot commissioners, the chairman thereof or the clerk of the county commission shall cause all necessary election records, books and supplies to be delivered by special messenger in the same manner and under the same terms and conditions as is provided the dispatch of the special messenger under the provisions of section twenty-five, article one of this chapter.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

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

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

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

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

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

The certificate of announcement shall be filed with the proper officer not earlier than the second Monday in January next preceding the primary election day, and not later than the last Saturday in January next preceding the primary election day, and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service before that hour.

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

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

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

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

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

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

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

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

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

(9) The words “subscribed and sworn to before me this
_____ day of ___________, 20____,” and a space for the
signature of the officer giving the oath.

The Secretary of State or the board of ballot commis-
sioners, as the case may be, may refuse to certify the
candidacy or remove the certification of the candidacy
upon receipt of a certified copy of the voter’s registration
record of the candidate evidencing that the candidate was
registered as a voter in a party other than the one named
in the certificate of announcement during the sixty days
immediately preceding the filing of the certificate:
Provided, That unless a signed formal complaint of
violation of this section and the certified copy of the
voter's registration record of the candidate be filed with
the officer receiving that candidate's certificate of an-
nouncement no later than ten days following the close of
the filing period, the candidate shall not be refused
certification for this reason.

(c) The certificate of announcement shall be subscribed
and sworn to by the candidate before some officer qualifi-
fied to administer oaths, who shall certify the same. Any
person who knowingly provides false information on the
certificate is guilty of false swearing and shall be punished
as set forth in section three, article nine of this chapter.

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

(e) No person shall be a candidate for more than one
office or office division at any election: Provided, That a
candidate for an office may also be a candidate for presi-
dent of the United States, for membership on a political
party executive committee or for delegate to a political
party national convention. Notwithstanding the provi-
sions of this section, nothing shall prohibit a candidate
from jointly running for or holding the offices of county
clerk and circuit clerk in those counties which operate a
joint clerkship system.
Any candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by section eleven, article five of this chapter, from all but one office prior to the close of the filing period shall not be certified by the Secretary of State or placed on the ballot for any office by the board of ballot commissioners.

The provisions of this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-one shall apply to the primary election held in the year one thousand nine hundred ninety-two and every primary election held thereafter. The provisions of this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-eight shall apply to the primary election held in the year two thousand and every primary election held thereafter.

§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 county commission 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 the clerk from the 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 or her 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.

§3-5-8a. Nominating petitions as alternatives to filing fees; oath of impecuniosity required; petition in lieu of payment of filing fee.

A candidate seeking nomination to any office who is unable to pay the filing fee may qualify through the following petition process in lieu of payment of the filing fee.

The candidate shall file an oath with the appropriate office required under section eight of this article stating that he or she is unable to pay the filing fee due to a lack of financial resources. Such oath shall be filed not earlier than the second Monday in January next preceding the primary election day.

Upon receipt of the written oath the receiving officer shall provide the candidate with in-lieu-of-filing-fee petition forms and instructions on gathering the required signatures. The number of required signatures shall be four qualified voters for each whole dollar of the filing fee: Provided, That the filing fee shall be waived, in whole and not in part. Only signatures of voters registered in the county, district or other political division represented by
the office sought may be solicited. Solicitors of signatures shall also be residents of the county, district or other geographical entity represented by the office sought:

Provided, however, That for offices to be filled by the voters of more than one county, separate petition forms shall be used for the signatures of qualified voters from each county.

No qualified voter forfeits his or her opportunity to vote in the primary election by signing an in-lieu-of-filing-fee petition.

The candidate may submit a greater number of signatures to allow for subsequent losses due to invalidity of some signatures. The clerk of the county commission may not be required to determine the validity of a greater number of signatures than that required by this section.

Signatures obtained on an in-lieu-of-filing-fee petition shall not be counted toward the number of voters required to sign a nomination certificate in accordance with section twenty-three of this article.

The candidate shall file all in-lieu-of-filing-fee petitions with the required number of valid signatures with the clerk of the county commission or Secretary of State, as the case may be, not later than the last date required by law for filing declarations of candidacies and payment of the filing fee.

The oath and forms required by this section shall be prescribed by the Secretary of State.

§3-5-9. Certification and posting of candidacies.

By the eighty-fourth day next preceding the day fixed for the primary election, the Secretary of State shall arrange the names of all candidates, who have filed announcements with him or her, as provided in this article, and who are entitled to have their names printed on any political party ballot, in accordance with the provisions of
this chapter, and shall forthwith certify the same under his or her name and the lesser seal of the state, and file the same in his or her office.

The certificate of candidates shall show: (1) The name and residence of each candidate; (2) the office for which he or she is a candidate; (3) the name of the political party of which he or she is a candidate; (4) upon what ballot his or her name is to be printed; and (5) in the case of a candidate for delegate to the national convention of any political party, the name of the person the candidate prefers as the presidential nominee of his or her party, or if he or she has no preference, the word "uncommitted".

The Secretary of State shall post a duplicate of the certificate in a conspicuous place in his or her office and keep same posted until after the primary election.

Immediately upon completion of such certification, the Secretary of State shall ascertain therefrom the candidates whose names are to appear on the primary election ballots in the several counties of the state and shall certify to the clerk of the county commission in each county the certificate information relating to each of the candidates whose names are to appear on the ballot in that county. He or she shall transmit the certificate to the several clerks by registered or certified mail, but, in emergency cases, he may resort to other reliable and speedy means of transmission which may be available so that such certificates shall reach the several clerks by the seventieth day next preceding such primary election day.

The provisions of this section shall apply to the primary election held in the year one thousand nine hundred eighty-six and every primary election held thereafter.

§3-5-11. Withdrawals; filling vacancies in candidacy; publication.

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

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

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

§3-5-12. Official and sample ballots; color.
There shall be a separate ballot printed on different colored paper for each political party participating in the primary election and the ballot of no two parties may be of the same color or tint. The Secretary of State shall select and determine the color of the paper of the ballot of each of the parties, and shall notify the clerk of the county commission of each county thereof, at the time he or she certifies the names of the candidates of the various parties to the clerk, as herein provided.

A different color of paper shall be selected and designated by the Secretary of State for each party. The sample ballots of each party shall be of a different color than the official ballot and of a different color from one another. There shall be printed across the face of such sample ballot in large letters the words “sample ballot”. No sample ballot shall be voted or counted in any election.

§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 county commission 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 county commission shall superintend and conduct the drawing and the method of conducting the drawing shall be prescribed by the Secretary of State.

(2) Except as provided herein, the position of each candidate within each office division shall be determined by the position drawn for that candidate individually: Provided, That if fewer candidates file for an office division than the total number to be nominated or elected, the vacant positions shall appear following the names of all candidates for the office.

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

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

§3-5-18. Disposition of certificates of results.

The certificates of the board of canvassers made pursuant to the preceding section shall be by them disposed of as follows: One of the certificates showing the votes received by each candidate of each party for each office to be filled by the voters of a political division greater than a county, including members of the State Executive Committee, shall be filed with the Secretary of State and preserved in his or her office, and a copy thereof filed in the office of the clerk of the county commission of the county of such board, to be preserved by the clerk, and which shall be open to public inspection; one certificate showing the votes received by each candidate of each party for each office to be filled by the voters of the county or magisterial district within such county, including members of the county executive committee, shall be filed with the clerk of the county commission and preserved in his or her office. If requested, the board of canvassers shall furnish to the county chairman of each political party a certificate showing the number of votes received by each of the candidates of such party in the county or any magisterial district therein.

The Secretary of State shall certify, under the seal of the state, to the clerk of the county commission of each county in which a candidate is to be voted for, the name of the candidate of each political party receiving the highest number of votes in the political division in which he or she is a candidate, and who is entitled to have his or her name
placed on the official ballot in the general election as the nominee of the party for such office. The Secretary of State shall also certify in the same manner the names of all candidates nominated by political parties or by groups of citizens, not constituting a political party, in any manner provided for making such nominations in this chapter.

§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 no 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 county commission no earlier than the first Monday in August and no later than seventy-seven days before the general election.

§3-5-23. Certificate nominations; requirements and control; penalties.

(a) Groups of citizens having no party organization may nominate candidates for public office otherwise than by conventions or primary elections. In the case, the candidate or candidates, jointly or severally, shall file a declaration with the Secretary of State if the office is to be filled by the voters of more than one county, or with the clerk of the county commission of the county if the office is to be filled by the voters of one county or political subdivision thereof; the declaration to be filed at least thirty days prior to the time of filing the certificate provided by section twenty-four of this article: Provided, That the deadline for filing the certificate for persons seeking ballot access as a candidate for the office of president or vice president shall be filed not later than the first day of August preceding the general election. At the time of filing of the declaration each candidate shall pay the filing fee required by law, and if the declaration is not so filed or the filing fee so paid, the certificate shall not be received by the Secretary of State, or clerk of the county commission, as the case may be.

(b) The person or persons soliciting or canvassing signatures of duly qualified voters on the certificate or certificates, may solicit or canvass duly registered voters residing within the county, district or other political division represented by the office sought, but must first
obtain from the clerk of the county commission credentials which must be exhibited to each voter canvassed or solicited, which credentials may be in the following form or effect:

State of West Virginia, County of ........................................, ss:

This certifies that the holder of this credential is hereby authorized to solicit and canvass duly registered voters residing in ............... (here place the county, district or other political division represented by the office sought) to sign a certificate purporting to nominate ........................................ (here place name of candidate heading list on certificate) for the office of ......................... and others, at the general election to be held on .................., 20....

Given under my hand and the seal of my office this ............. day of ........................., 20.....

.................................................

Clerk, County Commission of .......... County.

The clerk of each county commission, upon proper application made as herein provided, shall issue such credentials and shall keep a record thereof.

(c) The certificate shall be personally signed by duly registered voters, in their own proper handwriting or by their marks duly witnessed, who must be residents within the county, district or other political division represented by the office sought wherein the canvass or solicitation is made by the person or persons duly authorized. The signatures need not all be on one certificate. The number of signatures shall be equal to not less than two percent of the entire vote cast at the last preceding general election for the office in the state, district, county or other political division for which the nomination is to be made, but in no event shall the number be less than twenty-five. The number of signatures shall be equal to not less than two percent of the entire vote cast at the last preceding general election for any statewide, congressional or presidential
candidate, but in no event shall the number be less than twenty-five. Where two or more nominations may be made for the same office, the total of the votes cast at the last preceding general election for the candidates receiving the highest number of votes on each ticket for the office shall constitute the entire vote. No signature on a certificate shall be counted unless it be that of a duly registered voter of the county, district or other political division represented by the office sought wherein the certificate was presented.

(d) The certificates shall state the name and residence of each of the candidates; that he or she is legally qualified to hold the office; that the subscribers are legally qualified and duly registered as voters and desire to vote for the candidates; and may designate, by not more than five words, a brief name of the party which the candidates represent and may adopt a device or emblem to be printed on the official ballot. All candidates nominated by the signing of the certificates shall have their names placed on the official ballot as candidates, as if otherwise nominated under the provisions of this chapter.

The Secretary of State shall prescribe the form and content of the nomination certificates to be used for soliciting signatures. The content shall include the language to be used in giving written and oral notice to each voter that signing of the nominating certificate forfeits that voter's right to vote in the corresponding primary election.

Offices to be filled by the voters of more than one county shall use separate petition forms for the signatures of qualified voters for each county.

(e) The Secretary of State, or the clerk of the county commission, as the case may be, may investigate the validity of the certificates and the signatures thereon. If upon investigation there may be doubt as to the legitimacy and the validity of the certificate, he or she may request
the Attorney General of the state, or the prosecuting attorney of the county, to institute a quo warranto proceeding against the nominee or nominees by certificate to determine his or their right to the nomination to public office, and upon request being made, the Attorney General or prosecuting attorney shall institute the quo warranto proceeding. The clerk of the county commission shall, at the request of the Secretary of State or the clerk of the circuit court, compare the information from any certificate to the county voter registration records in order to assist in determining the validity of any certificates.

(f) Any person violating the provisions of this section, in addition to penalties prescribed elsewhere for violation of this chapter, is guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars, or confined in jail for not more than one year, or both, in the discretion of the court: Provided, That no criminal penalty may be imposed upon anyone who signs a nomination certificate and votes in the primary election held after the date the certificate was signed.

§3-5-24. Filing of nomination certificates; time.

All certificates nominating candidates for office under the preceding section, including a candidate for the office of presidential elector, shall be filed, in the case of a candidate to be voted for by the voters of the entire state or by any subdivision thereof other than a single county, with the Secretary of State, and in the case of all candidates for county and magisterial district offices, including all offices to be filled by the voters of a single county, with the clerk of the county commission, not later than the day preceding the date on which the primary election is held. After that date no certificate shall be received by such officers.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-4. Late nominations; stickers.
If a nomination to fill a vacancy is made by a political party executive committee or, on its failure to so act within the time prescribed by law, is made by the chairman of the committee, and certified to the clerk of the county commission after the ballots to be used at the ensuing election shall have been printed, the clerk shall forthwith lay such certificates before the ballot commissioners who, without delay, shall prepare, or cause to be prepared, and deliver, or cause to be delivered, to the election commissioners of each precinct in which the candidate is to be voted for, a number of stickers, containing only the name of the candidate, at least equal to the total number of ballots provided for the precinct; but no such stickers shall be furnished to or received by any person except a commissioner of election. It is the duty of the commissioners holding the election to deliver such stickers to the poll clerks, who shall, in the presence of the election commissioners, affix one of the stickers in a careful manner at the proper place for the name of the candidate, upon each ballot to be voted at the election, before the poll clerks sign their names on the ballots. The stickers may be delivered to the election officers, by the clerk of the county commission, with the ballots, poll books and other supplies.

§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 candi-
dates 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 jurisdic-
tion 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 county commissions of the
appropriate counties.

(2) The clerk of the county commission shall, immedi-
ately following the filing deadline, post the names of all
official write-in candidates for offices on the ballot in one
county and certify and deliver to the election officials of
the appropriate precincts, the names of all official write-in
candidates and the office sought by each for statewide,
district and county offices on the ballot in the precinct for
which valid write-in votes will be counted 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.
ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-18. Unlawful voting in primary elections; penalties.

1 Any person voting, in any primary election, any ticket of
2 a party other than that of which he is registered as a
3 member, and any election officer receiving the vote of any
4 such person, knowing, or having reason to believe, that
5 such voter is not a member of the party the ticket of which
6 he is voting, shall, at the primary election to be held to
7 nominate candidates for the same office, vote at such
8 primary election; shall in each instance be guilty of a
9 misdemeanor, and, on conviction thereof, shall be fined
10 not more than one thousand dollars, or be confined in the
11 county jail for not more than one year, or both, in the
12 discretion of the court.

ARTICLE 10. FILLING VACANCIES.

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

1 When a vacancy occurs in the office of clerk of the
2 circuit court, the circuit court by a majority vote of the
3 judges, or the chief judge thereof in vacation, shall fill the
4 same by appointment of a person of the same political
5 party as the officeholder vacating the office until the next
6 general election, or until the completion of the term if the
7 term ends on the thirty-first day of December following
8 the next general election. The person so appointed shall
9 hold office until his or her successor is elected and quali-
10 fied. At the general election, a clerk shall be elected for
11 the unexpired term if the unexpired term is greater than
12 one year. The circuit court, or the chief judge thereof in
13 vacation, shall cause a notice of the election to be pub-
14 lished prior to the election as a Class II-0 legal advertise-
15 ment in compliance with the provisions of article three,
16 chapter fifty-nine of this code. The publication area for
17 the publication shall be the county. If the vacancy occurs
18 no later than the eighty-fourth day before the primary
19 election held to nominate candidates to be voted for at the
20 general election, at which any vacancy is to be filled,
candidates to fill the vacancy shall be nominated at the primary election in accordance with the time requirements and the provisions and procedures prescribed in section eleven, article five of this chapter. If the vacancy occurs after the eighty-fourth day before the primary but not later than the eighty-fourth day before the general election, they shall be nominated by the county executive committee in the manner provided in section nineteen, article five of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next general election.
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 Day of May, 2005.

Governor