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2005 MAY -4 P 4: 16

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 669

(By Senator HUNTER, ET AL)

PASSED APRIL 9, 2005

In Effect 90 Days From Passage

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Senate Bill No. 669

(BY SENATORS HUNTER, OLIVERIO, FOSTER AND JENKINS)

[Passed April 9, 2005; in effect ninety days from 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, §3-5-13a, §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.

1 In each county in the state, the clerk of the county
2 commission while holding office, and two persons ap-
3 pointed by him or her, one from each of the two political
4 parties which cast the largest and second largest number
5 of votes in the state at the last preceding general election,
6 shall constitute a board of ballot commissioners. The clerk
7 shall be chairman. It shall be the duty of the clerk to
8 notify the chairman of the respective county executive
9 committees of the two parties, at least five days before
10 making appointments, the time and place of making the
11 appointments. If at any time after notice is given, and
12 before or on the day so fixed for making appointments, the
13 chairman of each of the committees shall designate, in
14 writing, a member of such party as ballot commissioner.
15 Each designee shall be appointed if he or she meets the
16 qualifications of a voter. Ballot commissioners shall be
17 appointed between the fifteenth and thirtieth days of
18 January in each year in which a general election is to be
19 held, for a term of two years beginning on the first day of
20 February next ensuing. They shall perform the duties of
21 ballot commissioners at all general, special and primary

22 elections held in the county or any magisterial district
23 thereof during their term of office. A vacancy shall be
24 filled in the same manner as an original appointment, but
25 immediate notice of a vacancy shall, where necessary, be
26 deemed compliance with the five-day notice provision.

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

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

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

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

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

28 (e) During the period of early in-person voting, the clerk
29 of the county commission shall post the cards of general

30 information, a list of official write-in candidates and
31 sample ballots within the area where absentee voting is
32 conducted.

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

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

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

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

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

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

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

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

26 (d) The number of regular official ballots packaged for
27 each precinct shall equal the number of registered voters
28 of the precinct. The remaining regular official ballots

29 shall be packaged and delivered to the clerk of the county
30 commission who shall retain them unopened until they are
31 required for an emergency. Each package of ballots shall
32 be wrapped and sealed in a manner which will immedi-
33 ately make apparent any attempt to open, alter or tamper
34 with the ballots. Each package of ballots for a precinct
35 shall be clearly labeled in a manner which cannot be
36 altered, with the county name, the precinct number and
37 the number of ballots contained in each package. If the
38 packaging material conceals the face of the ballot, a
39 sample ballot identical to the official ballots contained
40 therein shall be securely attached to the outside of the
41 package or, in the case of ballot cards, the type of ballot
42 shall be included in the label.

43 (e) All absentee ballots necessary for conducting absen-
44 tee voting in all voting systems shall be delivered to the
45 clerk of the county commission of the appropriate county
46 not later than the forty-second day before the election. All
47 official ballots in paper ballot systems shall be delivered
48 to the clerk of the county commission of the appropriate
49 county not later than twenty-eight days before the elec-
50 tion.

51 (f) Upon a finding of the board of ballot commissioners
52 that an official ballot contains an error which, in the
53 opinion of the board, is of sufficient magnitude as to
54 confuse or mislead the voters, the board shall cause the
55 error to be corrected either by the reprinting of the ballots
56 or by the use of stickers printed with the correction and of
57 suitable size to be placed over the error without covering
58 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.**

1 (a) The printing of ballots for any election to be held
2 pursuant to the provisions of this chapter shall be con-

3 tracted for with a vendor authorized in accordance with
4 the provisions of this section.

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

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

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

30 (3) Upon receipt of the completed application, the
31 Secretary of State shall issue a certificate of authorization
32 to print ballots, which shall remain in effect for two years
33 from the date of issuance and may be renewed upon
34 application therefor: *Provided*, That the Secretary of
35 State may deny the application to issue or renew the
36 certificate of authorization, or may suspend or revoke the
37 certificate of authorization upon a determination that the
38 vendor has not substantially complied with the printing,

39 packaging and delivery specifications in the printing of
40 ballots for any state, county or municipal election, or that
41 the vendor is not eligible or is no longer eligible to print
42 ballots pursuant to the provisions of this section. The
43 Secretary of State shall give written notice of any such
44 determination by certified mail, return receipt requested,
45 to the vendor setting forth the reason for the suspension,
46 revocation or the denial of the application or the denial of
47 the renewal thereof. The applicant may, within sixty days
48 of the receipt of such denial, file a written appeal with the
49 State Election Commission. The State Election Commis-
50 sion shall promulgate rules establishing a hearing process
51 for such appeals.

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

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

1 (a) It shall be the duty of the clerk of the county commis-
2 sion to appoint one or more of the commissioners of
3 election or poll clerks at each precinct of the county to
4 attend at the office of the clerk of the county commission
5 at least one day before each election to receive the ballots,
6 ballot boxes, poll books, registration records and forms
7 and all other supplies and materials for conducting the
8 election at the respective precincts. The clerk shall take a
9 receipt for the respective materials delivered to the
10 commissioners of election or poll clerks and shall file the
11 receipt in his or her office. It shall be the duty of the
12 commissioners or poll clerks to receive the supplies and
13 materials from the clerk and to deliver them with the seal
14 of all sealed packages unbroken at the election precinct in
15 time to open the election.

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

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.**

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

5 (1) For any election held throughout the county, within
6 a political subdivision or territory other than a municipal-
7 ity, or within a municipality when the municipal election
8 is conducted in conjunction with a county election, the
9 clerk of the county commission; or

10 (2) The municipal recorder or other officer authorized by
11 charter or ordinance provisions to conduct absentee
12 voting, for any election held entirely within the municipal-
13 ity, or in the case of annexation elections, within the area
14 affected. The terms “clerk” or “clerk of the county
15 commission” or “official designated to supervise and
16 conduct absentee voting” used elsewhere in this article
17 means municipal recorder or other officer in the case of
18 municipal elections.

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

23 (1) The completed application is to be on a form pre-
24 scribed by the Secretary of State and is to contain the
25 name, date of birth and political affiliation of the voter,
26 residence address within the county, the address to which
27 the ballot is to be mailed, the authorized reason, if any, for
28 which the absentee ballot is requested and, if the reason is
29 illness or hospitalization, the name and telephone number
30 of the attending physician, the signature of the voter to a
31 declaration made under the penalties for false swearing as
32 provided in section three, article nine of this chapter that

33 the statements and declarations contained in the applica-
34 tion are true, any additional information which the voter
35 is required to supply, any affidavit which may be required
36 and an indication as to whether it is an application for
37 voting in person or by mail; or

38 (2) For any person authorized to vote an absentee ballot
39 under the provisions of 42 U. S. C. §1973, *et seq.*, the
40 Uniformed and Overseas Citizens Absentee Voting Act of
41 1986, the completed application may be on the federal
42 postcard application for absentee ballot form issued under
43 authority of that act; or

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

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

1 (a) Absent voters' ballots are to be in all respects like
2 other ballots. Not less than seventy days before the date
3 on which any primary, general or special election is to be
4 held, unless a lesser number of days is provided in any
5 specific election law in which case the lesser number of
6 days applies, the clerks of the county commissions of the
7 several counties shall estimate and determine the number
8 of absent voters' ballots of all kinds which will be required
9 in their respective counties for that election. The ballots
10 for the election of all officers, or the ratification, accep-
11 tance or rejection of any measure, proposition or other
12 public question to be voted on by the voters, are to be
13 prepared and printed under the direction of the board of
14 ballot commissioners constituted as provided in article one
15 of this chapter. The several county boards of ballot

16 commissioners shall prepare and have printed, in the
17 number they may determine, absent voters' ballots that are
18 to be printed under their directions as provided in this
19 chapter and those ballots are to be delivered to the clerk of
20 the county commission of the county not less than forty-
21 two days before the day of the election at which they are
22 to be used.

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

ARTICLE 4. VOTING MACHINES.

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

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

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

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

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

44 (e) When the ballot labels and absentee ballots are
45 delivered, the clerk of the county commission shall exam-
46 ine them for accuracy, assure that the appropriate ballots
47 and ballot labels are designated for each voting precinct
48 and insert one set in each machine prior to the inspection
49 of the machines as prescribed in section twelve of this
50 article. The remainder of the ballot labels for each ma-

51 chine shall be retained by the clerk of the county commis-
52 sion for use in an emergency.

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

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

1 When the clerk of the county commission has completed
2 the preparation of the voting machines, as provided in
3 section eleven of this article, and not later than seven days
4 before the day of the election, he or she shall notify the
5 members of the county commission and the ballot commis-
6 sioners that the machines are ready for use. Thereupon the
7 members of the county commission and the ballot commis-
8 sioners shall convene at the office of the clerk, or at such
9 other place wherein the voting machines are stored, not
10 later than five days before the day of the election, and
11 shall examine the machines to determine whether the
12 requirements of this article have been met. Any candidate,
13 and one representative of each political party having
14 candidates to be voted on at the election, may be present
15 during the examination. If the machines are found to be
16 in proper order, the members of the county commission
17 and the ballot commissioners shall endorse their approval
18 in the book in which the clerk entered the numbers of the
19 machines opposite the numbers of the precincts. The clerk
20 shall then deliver the keys to the voting machines to the

21 ballot commissioners who shall give a receipt for the keys,
 22 which shall contain identification of such keys. Not later
 23 than one day before the election the election commissioner
 24 of each precinct, who shall have been previously desig-
 25 nated by the ballot commissioners, shall attend at the
 26 office of the clerk of the county commission to receive the
 27 key or keys to the device covering the registering counters
 28 and such other keys as may be necessary for the operation
 29 of the machine in registering votes, and to receive the
 30 other necessary election records, books and supplies
 31 required by law. The election commissioners shall receive
 32 the per diem mileage rate prescribed by law for this
 33 service. The election commissioners shall give the ballot
 34 commissioners a receipt for the keys, records, books and
 35 supplies. The receipt shall contain identification of the
 36 keys. The master key and all other keys shall remain in
 37 the possession of the clerk of the county commission.

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

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

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

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

1 In counties using electronic voting systems utilizing vote
 2 recording devices:

- 3 (1) The number of ballot labels printed, where applica-
 4 ble, are to equal one and one-half times the total number

5 of corresponding vote recording devices to be used in the
6 election. All labels are to be delivered to the clerk of the
7 county commission at least thirty-five days prior to the
8 election. The clerk shall immediately examine the ballot
9 labels for accuracy and assure that the appropriate ballot
10 labels are designated for each voting precinct.

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

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

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

30 (5) The clerk of the county commission shall seal the vote
31 recording devices so as to prevent tampering with ballot
32 labels, and enter in an appropriate book, opposite the
33 number of each precinct, the identifying or distinguishing
34 number of the specific vote recording device or devices to
35 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.**

1 When the clerk of the county commission has completed
2 the preparation of the ballots and vote recording devices
3 as provided in sections eleven, eleven-a and twelve of this
4 article and as provided in section twenty-one, article one
5 of this chapter, and not later than seven days before the
6 day of the election, he or she shall notify the members of
7 the county commission and the ballot commissioners that
8 the ballots and devices, where applicable, are ready for
9 use. Thereupon the members of the county commission
10 and the ballot commissioners shall convene at the office of
11 the clerk or at such other place wherein the vote recording
12 devices, where applicable, and ballots are stored, not later
13 than five days before the day of the election, and shall
14 inspect the devices and the ballots to determine whether
15 the requirements of this article have been met. Notice of
16 the place and time of such inspection shall be published,
17 no less than three days prior thereto, as a Class I-0 legal
18 advertisement in compliance with the provisions of article
19 three, chapter fifty-nine of this code, and the publication
20 area for the publication shall be the county involved. Any
21 candidate and one representative of each political party on
22 the ballot may be present during such examination. If the
23 devices, where applicable, and ballots are found to be in
24 proper order, the members of the county commission and
25 the ballot commissioners shall, where applicable, endorse
26 their approval in the book in which the clerk entered the
27 numbers of the devices opposite the numbers of the
28 precincts. The vote recording devices and the ballots shall
29 then be secured in double lock rooms. The clerk and the
30 president or president pro tempore of the county commis-
31 sion shall each have a key. The rooms shall be unlocked
32 only in their presence and only for the removal of the
33 devices, where applicable, and the ballots for transporta-
34 tion to the polls. Upon such removal of the devices and
35 ballots, the clerk and president or president pro tempore
36 of the county commission shall certify in writing signed by
37 them that the devices, where applicable, and packages of
38 ballots were found to be sealed when removed for trans-
39 portation to the polls.

40 Not later than one day before the election the election
 41 commissioner of each precinct who shall have been
 42 previously designated by the ballot commissioners, shall
 43 attend at the office of the clerk of the county commission
 44 to receive the necessary election records, books and
 45 supplies required by law. The election commissioners shall
 46 receive the per diem mileage rate prescribed by law for
 47 this service. The election commissioners shall give the
 48 ballot commissioners a sequentially numbered written
 49 receipt, on a printed form, provided by the clerk of the
 50 county commission, for such records, books and supplies.
 51 The receipt shall be prepared in duplicate. One copy of the
 52 receipt shall remain with the clerk of the county commis-
 53 sion and one copy shall be delivered to the president or
 54 president pro tempore of the county commission.

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

1 In case any commissioner of election shall fail to appear
 2 at the offices of the clerk of the county commission by the
 3 close of the clerk's office on the day prior to any election,
 4 the board of ballot commissioners, the chairman thereof or
 5 the clerk of the county commission shall cause all neces-
 6 sary election records, books and supplies to be delivered by
 7 special messenger in the same manner and under the same
 8 terms and conditions as is provided the dispatch of the
 9 special messenger under the provisions of section twenty-
 10 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.**

1 Any person who is eligible and seeks to hold an office or
 2 political party position to be filled by election in any
 3 primary or general election held under the provisions of
 4 this chapter shall file a certificate of announcement
 5 declaring as a candidate for the nomination or election to
 6 the office.

7 (a) The certificate of announcement shall be filed as
8 follows:

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

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

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

17 The certificate of announcement shall be filed with the
18 proper officer not earlier than the second Monday in
19 January next preceding the primary election day, and not
20 later than the last Saturday in January next preceding the
21 primary election day, and must be received before mid-
22 night, eastern standard time, of that day or, if mailed, shall
23 be postmarked by the United States Postal Service before
24 that hour.

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

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

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

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

38 (4) The county of residence and a statement that the
39 candidate is a legally qualified voter of that county; and

40 the magisterial district of residence for candidates elected
41 from magisterial districts or under magisterial district
42 limitations;

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

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

55 (7) For candidates for delegate to national convention,
56 the name of the presidential candidate to be listed on the
57 ballot as the preference of the candidate on the first
58 convention ballot; or, a statement that the candidate
59 prefers to remain "uncommitted";

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

62 (9) The words "subscribed and sworn to before me this
63 _____ day of _____, 20____," and a space for the
64 signature of the officer giving the oath.

65 The Secretary of State or the board of ballot commis-
66 sioners, as the case may be, may refuse to certify the
67 candidacy or remove the certification of the candidacy
68 upon receipt of a certified copy of the voter's registration
69 record of the candidate evidencing that the candidate was
70 registered as a voter in a party other than the one named
71 in the certificate of announcement during the sixty days
72 immediately preceding the filing of the certificate:
73 *Provided*, That unless a signed formal complaint of
74 violation of this section and the certified copy of the

75 voter's registration record of the candidate be filed with
76 the officer receiving that candidate's certificate of an-
77 nouncement no later than ten days following the close of
78 the filing period, the candidate shall not be refused
79 certification for this reason.

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

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

100 (e) No person shall be a candidate for more than one
101 office or office division at any election: *Provided*, That a
102 candidate for an office may also be a candidate for presi-
103 dent of the United States, for membership on a political
104 party executive committee or for delegate to a political
105 party national convention. Notwithstanding the provi-
106 sions of this section, nothing shall prohibit a candidate
107 from jointly running for or holding the offices of county
108 clerk and circuit clerk in those counties which operate a
109 joint clerkship system.

110 (f) Any candidate who files a certificate of announce-
111 ment for more than one office or division and does not
112 withdraw, as provided by section eleven, article five of this
113 chapter, from all but one office prior to the close of the
114 filing period shall not be certified by the Secretary of State
115 or placed on the ballot for any office by the board of ballot
116 commissioners.

117 The provisions of this section enacted during the regular
118 session of the Legislature in the year one thousand nine
119 hundred ninety-one shall apply to the primary election
120 held in the year one thousand nine hundred ninety-two
121 and every primary election held thereafter. The provisions
122 of this section enacted during the regular session of the
123 Legislature in the year one thousand nine hundred ninety-
124 eight shall apply to the primary election held in the year
125 two thousand and every primary election held thereafter.

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

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

5 (a) A candidate for president of the United States, for
6 vice president of the United States, for United States
7 Senator, for member of the United States House of Repre-
8 sentatives, for Governor and for all other state elective
9 offices shall pay a fee equivalent to one percent of the
10 annual salary of the office for which the candidate an-
11 nounces: *Provided*, That the filing fee for any candidate
12 for president or vice president of the United States shall
13 not exceed two thousand five hundred dollars commencing
14 with the two thousand four filing period;

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

19 (c) A candidate for member of the House of Delegates
20 shall pay a fee of one-half percent of the total annual
21 salary of the office and a candidate for state Senator shall
22 pay a fee of one percent of the total annual salary of the
23 office;

24 (d) A candidate for sheriff, prosecuting attorney, circuit
25 clerk, county clerk, assessor, member of the county
26 commission and magistrate shall pay a fee equivalent to
27 one percent of the annual salary, excluding any additional
28 compensation or commission of the office for which the
29 candidate announces. A candidate for county board of
30 education shall pay a fee of twenty-five dollars. A candi-
31 date for any other county office shall pay a fee of ten
32 dollars;

33 (e) Delegates to the national convention of any political
34 party shall pay the following filing fees:

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

38 (f) Candidates for members of political executive com-
39 mittees and other political committees shall pay the
40 following filing fees:

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

48 Candidates filing for an office to be filled by the voters
49 of one county shall pay the filing fee to the clerk of the
50 county commission and candidates filing for an office to
51 be filled by the voters of more than one county shall pay
52 the filing fee to the Secretary of State at the time of filing

53 their certificates of announcement and no certificate of
54 announcement shall be received until the filing fee is paid.

55 All moneys received by the clerk from the fees shall be
56 credited to the general county fund. Moneys received by
57 the Secretary of State from fees paid by candidates for
58 offices to be filled by all the voters of the state shall be
59 deposited in a special fund for that purpose and shall be
60 apportioned and paid by him or her to the several counties
61 on the basis of population and that received from candi-
62 dates from a district or judicial circuit of more than one
63 county shall be apportioned to the counties comprising the
64 district or judicial circuit in like manner. When such
65 moneys are received by sheriffs, it shall be credited to the
66 general county fund.

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

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

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

11 Upon receipt of the written oath the receiving officer
12 shall provide the candidate with in-lieu-of-filing-fee
13 petition forms and instructions on gathering the required
14 signatures. The number of required signatures shall be
15 four qualified voters for each whole dollar of the filing fee:
16 *Provided*, That the filing fee shall be waived, in whole and
17 not in part. Only signatures of voters registered in the
18 county, district or other political division represented by

19 the office sought may be solicited. Solicitors of signatures
20 shall also be residents of the county, district or other
21 geographical entity represented by the office sought:
22 *Provided, however,* That for offices to be filled by the
23 voters of more than one county, separate petition forms
24 shall be used for the signatures of qualified voters from
25 each county.

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

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

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

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

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

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

1 By the eighty-fourth day next preceding the day fixed
2 for the primary election, the Secretary of State shall
3 arrange the names of all candidates, who have filed
4 announcements with him or her, as provided in this article,
5 and who are entitled to have their names printed on any
6 political party ballot, in accordance with the provisions of

7 this chapter, and shall forthwith certify the same under his
8 or her name and the lesser seal of the state, and file the
9 same in his or her office.

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

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

22 Immediately upon completion of such certification, the
23 Secretary of State shall ascertain therefrom the candidates
24 whose names are to appear on the primary election ballots
25 in the several counties of the state and shall certify to the
26 clerk of the county commission in each county the certifi-
27 cate information relating to each of the candidates whose
28 names are to appear on the ballot in that county. He or
29 she shall transmit the certificate to the several clerks by
30 registered or certified mail, but, in emergency cases, he
31 may resort to other reliable and speedy means of transmis-
32 sion which may be available so that such certificates shall
33 reach the several clerks by the seventieth day next preced-
34 ing such primary election day.

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

**§3-5-11. Withdrawals; filling vacancies in candidacy; publica-
tion.**

1 (a) A candidate who has filed a certificate of announce-
2 ment and wishes to withdraw and decline to stand as a

3 candidate for the office shall file a signed and notarized
4 statement of withdrawal with the same officer with whom
5 the certificate of announcement was filed. If the statement
6 of withdrawal is received not later than the third Tuesday
7 following the close of candidate filing, the name of a
8 candidate who files that statement of withdrawal may not
9 be printed on the ballot. No candidate who files a state-
10 ment of withdrawal after that time may have his or her
11 name removed from the ballot.

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

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

§3-5-12. Official and sample ballots; color.

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

10 A different color of paper shall be selected and desig-
 11 nated by the Secretary of State for each party. The sample
 12 ballots of each party shall be of a different color than the
 13 official ballot and of a different color from one another.
 14 There shall be printed across the face of such sample ballot
 15 in large letters the words "sample ballot". No sample
 16 ballot shall be voted or counted in any election.

**§3-5-13a. Order of offices and candidates on the ballot; uniform
 drawing date.**

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

8 NATIONAL TICKET: President (and Vice President in
 9 the general election), United States Senator, member of
 10 the United States House of Representatives

11 STATE TICKET: Governor, Secretary of State, Auditor,
 12 Treasurer, Commissioner of Agriculture, Attorney General,
 13 Justice of the Supreme Court of Appeals, State Senator,
 14 member of the House of Delegates, circuit judge in
 15 multicounty districts, family court judge in multicounty
 16 districts, any other multicounty office, state executive
 17 committee

18 COUNTY TICKET: Circuit judge in single-county
19 districts, family court judge in single-county districts,
20 clerk of the circuit court, county commissioner, clerk of
21 the county commission, prosecuting attorney, sheriff,
22 assessor, magistrate, surveyor, congressional district
23 executive committee, senatorial district executive commit-
24 tee in multicounty districts, delegate district executive
25 committee in multicounty districts

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

29 DISTRICT TICKET: County executive committee.

30 (b) Except for office divisions in which no more than one
31 person has filed a certificate of announcement, the ar-
32 rangement of names for all offices shall be determined by
33 lot according to the following provisions:

34 (1) On the fourth Tuesday following the close of the
35 candidate filing, beginning at nine o'clock a. m., a drawing
36 by lot shall be conducted in the office of the clerk of the
37 county commission in each county. Notice of the drawing
38 shall be given on the form for the certificate of announce-
39 ment and no further notice shall be required. The clerk of
40 the county commission shall superintend and conduct the
41 drawing and the method of conducting the drawing shall
42 be prescribed by the Secretary of State.

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

50 (3) Candidates for delegate to national convention who
51 have filed a commitment to a candidate for president shall
52 be listed alphabetically within the group of candidates

53 committed to the same candidate for president and
54 uncommitted candidates shall be listed alphabetically in
55 an uncommitted category. The position of each group of
56 committed candidates and uncommitted candidates shall
57 be determined by lot by drawing the names of the presi-
58 dential candidates and for an uncommitted category.

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

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

1 The certificates of the board of canvassers made pursu-
2 ant to the preceding section shall be by them disposed of
3 as follows: One of the certificates showing the votes
4 received by each candidate of each party for each office to
5 be filled by the voters of a political division greater than
6 a county, including members of the State Executive
7 Committee, shall be filed with the Secretary of State and
8 preserved in his or her office, and a copy thereof filed in
9 the office of the clerk of the county commission of the
10 county of such board, to be preserved by the clerk, and
11 which shall be open to public inspection; one certificate
12 showing the votes received by each candidate of each party
13 for each office to be filled by the voters of the county or
14 magisterial district within such county, including members
15 of the county executive committee, shall be filed with the
16 clerk of the county commission and preserved in his or her
17 office. If requested, the board of canvassers shall furnish
18 to the county chairman of each political party a certificate
19 showing the number of votes received by each of the
20 candidates of such party in the county or any magisterial
21 district therein.

22 The Secretary of State shall certify, under the seal of the
23 state, to the clerk of the county commission of each county
24 in which a candidate is to be voted for, the name of the
25 candidate of each political party receiving the highest
26 number of votes in the political division in which he or she
27 is a candidate, and who is entitled to have his or her name

28 placed on the official ballot in the general election as the
29 nominee of the party for such office. The Secretary of
30 State shall also certify in the same manner the names of all
31 candidates nominated by political parties or by groups of
32 citizens, not constituting a political party, in any manner
33 provided for making such nominations in this chapter.

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

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

6 (1) Each appointment made under this section shall be
7 made by the executive committee of the political party for
8 the political division in which the vacancy occurs: *Pro-*
9 *vided*, That if the executive committee holds a duly called
10 meeting in accordance with section nine, article one of this
11 chapter but fails to make an appointment or fails to certify
12 the appointment of the candidate to the proper filing
13 officer within the time required, the chairperson of the
14 executive committee may make the appointment not later
15 than two days following the deadline for the executive
16 committee.

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

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

36 (4) If a vacancy in nomination is caused by the disquali-
37 fication of a candidate and the vacancy occurs not later
38 than eighty-four days before the general election, a
39 nominee may be appointed by the executive committee
40 and certified to the proper filing officer not later than
41 seventy-eight days before the general election. A candi-
42 date may be determined ineligible if a written request is
43 made by an individual with information to show a candi-
44 date's ineligibility to the State Election Commission no
45 later than ninety-five days before the general election
46 explaining grounds why a candidate is not eligible to be
47 placed on the general election ballot or not eligible to hold
48 the office, if elected. The State Election Commission shall
49 review the reasons for the request. If the commission finds
50 the circumstances warrant the disqualification of the
51 candidate, the Commission may authorize appointment by
52 the executive committee to fill the vacancy. Upon receipt
53 of the authorization a nominee may be appointed by the
54 executive committee and certified to the proper filing
55 officer no later than seventy-eight days before the general
56 election.

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

63 (6) If a vacancy in nomination is caused by the with-
64 drawal of the candidate no later than ninety-eight days

65 before the general election due to extenuating personal
66 circumstances which will prevent the candidate from
67 serving in the office if elected and if the candidate or the
68 chairperson of the executive committee for the political
69 division applies in writing to the State Election Commis-
70 sion no later than ninety-five days before the general
71 election for permission to remove the candidate's name
72 from the general election ballot, the State Election Com-
73 mission shall review the reasons for the request. If the
74 Commission finds the circumstances warrant the with-
75 drawal of the candidate, the Commission shall authorize
76 appointment by the executive committee to fill the va-
77 cancy. Upon receipt of the authorization, a nominee may
78 be appointed by the executive committee and certified to
79 the proper filing officer no later than seventy-eight days
80 before the general election.

81 (7) If a vacancy in nomination is caused by the death of
82 the candidate occurring no later than twenty-five days
83 before the general election, a nominee may be appointed
84 by the executive committee and certified to the proper
85 filing officer no later than twenty-one days following the
86 date of death or no later than twenty-two days before the
87 general election, whichever date occurs first.

88 (b) Except as otherwise provided in article ten of this
89 chapter, if any vacancy occurs in a partisan office or
90 position other than political party executive committee,
91 which creates an unexpired term for a position which
92 would not otherwise appear on the ballot in the general
93 election, and the vacancy occurs after the close of candi-
94 date filing for the primary election but not later than
95 eighty-four days before the general election, a nominee of
96 each political party may be appointed by the executive
97 committee and certified to the proper filing officer no later
98 than seventy-eight days before the general election.
99 Appointments shall be filed in the same manner as pro-
100 vided in subsection (a) of this section, except that the filing
101 fee shall be paid before the appointment is complete.

102 (c) When a vacancy occurs in the board of education
103 after the close of candidate filing for the primary election
104 but not later than eighty-four days before the general
105 election, a special candidate filing period shall be estab-
106 lished. Candidates seeking election to any unexpired term
107 for board of education shall file a certificate of announce-
108 ment and pay the filing fee to the clerk of the county
109 commission no earlier than the first Monday in August and
110 no later than seventy-seven days before the general
111 election.

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

1 (a) Groups of citizens having no party organization may
2 nominate candidates for public office otherwise than by
3 conventions or primary elections. In the case, the candi-
4 date or candidates, jointly or severally, shall file a declara-
5 tion with the Secretary of State if the office is to be filled
6 by the voters of more than one county, or with the clerk of
7 the county commission of the county if the office is to be
8 filled by the voters of one county or political subdivision
9 thereof; the declaration to be filed at least thirty days prior
10 to the time of filing the certificate provided by section
11 twenty-four of this article: *Provided*, That the deadline
12 for filing the certificate for persons seeking ballot access
13 as a candidate for the office of president or vice president
14 shall be filed not later than the first day of August preced-
15 ing the general election. At the time of filing of the
16 declaration each candidate shall pay the filing fee required
17 by law, and if the declaration is not so filed or the filing
18 fee so paid, the certificate shall not be received by the
19 Secretary of State, or clerk of the county commission, as
20 the case may be.

21 (b) The person or persons soliciting or canvassing
22 signatures of duly qualified voters on the certificate or
23 certificates, may solicit or canvass duly registered voters
24 residing within the county, district or other political
25 division represented by the office sought, but must first

26 obtain from the clerk of the county commission credentials
27 which must be exhibited to each voter canvassed or
28 solicited, which credentials may be in the following form
29 or effect:

30 State of West Virginia, County of, ss:

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

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

41
42 Clerk, County Commission of County.

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

46 (c) The certificate shall be personally signed by duly
47 registered voters, in their own proper handwriting or by
48 their marks duly witnessed, who must be residents within
49 the county, district or other political division represented
50 by the office sought wherein the canvass or solicitation is
51 made by the person or persons duly authorized. The
52 signatures need not all be on one certificate. The number
53 of signatures shall be equal to not less than two percent of
54 the entire vote cast at the last preceding general election
55 for the office in the state, district, county or other political
56 division for which the nomination is to be made, but in no
57 event shall the number be less than twenty-five. The
58 number of signatures shall be equal to not less than two
59 percent of the entire vote cast at the last preceding general
60 election for any statewide, congressional or presidential

61 candidate, but in no event shall the number be less than
62 twenty-five. Where two or more nominations may be
63 made for the same office, the total of the votes cast at the
64 last preceding general election for the candidates receiving
65 the highest number of votes on each ticket for the office
66 shall constitute the entire vote. No signature on a certifi-
67 cate shall be counted unless it be that of a duly registered
68 voter of the county, district or other political division
69 represented by the office sought wherein the certificate
70 was presented.

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

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

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

92 (e) The Secretary of State, or the clerk of the county
93 commission, as the case may be, may investigate the
94 validity of the certificates and the signatures thereon. If
95 upon investigation there may be doubt as to the legitimacy
96 and the validity of the certificate, he or she may request

97 the Attorney General of the state, or the prosecuting
98 attorney of the county, to institute a quo warranto pro-
99 ceeding against the nominee or nominees by certificate to
100 determine his or their right to the nomination to public
101 office, and upon request being made, the Attorney General
102 or prosecuting attorney shall institute the quo warranto
103 proceeding. The clerk of the county commission shall, at
104 the request of the Secretary of State or the clerk of the
105 circuit court, compare the information from any certificate
106 to the county voter registration records in order to assist
107 in determining the validity of any certificates.

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

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

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

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-4. Late nominations; stickers.

1 If a nomination to fill a vacancy is made by a political
2 party executive committee or, on its failure to so act
3 within the time prescribed by law, is made by the chair-
4 man of the committee, and certified to the clerk of the
5 county commission after the ballots to be used at the
6 ensuing election shall have been printed, the clerk shall
7 forthwith lay such certificates before the ballot commis-
8 sioners who, without delay, shall prepare, or cause to be
9 prepared, and deliver, or cause to be delivered, to the
10 election commissioners of each precinct in which the
11 candidate is to be voted for, a number of stickers, contain-
12 ing only the name of the candidate, at least equal to the
13 total number of ballots provided for the precinct; but no
14 such stickers shall be furnished to or received by any
15 person except a commissioner of election. It is the duty of
16 the commissioners holding the election to deliver such
17 stickers to the poll clerks, who shall, in the presence of the
18 election commissioners, affix one of the stickers in a
19 careful manner at the proper place for the name of the
20 candidate, upon each ballot to be voted at the election,
21 before the poll clerks sign their names on the ballots. The
22 stickers may be delivered to the election officers, by the
23 clerk of the county commission, with the ballots, poll
24 books and other supplies.

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

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

10 (a) The write-in candidate's certificate of announcement
11 shall be in a form prescribed by the Secretary of State on
12 which the candidate shall make a sworn statement before

13 a notary public or other officer authorized to give oaths
14 containing the following information:

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

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

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

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

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

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

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

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

40 (2) When a vacancy occurs in the nomination of candi-
41 dates for an office on the ballot resulting from the death of
42 the nominee or from the disqualification or removal of a
43 nominee from the ballot by a court of competent jurisdic-
44 tion not earlier than the twenty-first day nor later than the
45 fifth day before the general election, the certificate shall

46 be received no later than the close of business on the fifth
47 day before the election or the close of business on the day
48 following the occurrence of the vacancy, whichever is
49 later;

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

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

65 (1) The Secretary of State shall, immediately following
66 the filing deadline, post the names of all official write-in
67 candidates for offices on the ballot in more than one
68 county and certify the name of each official write-in
69 candidate to the clerks of the county commissions of the
70 appropriate counties.

71 (2) The clerk of the county commission shall, immedi-
72 ately following the filing deadline, post the names of all
73 official write-in candidates for offices on the ballot in one
74 county and certify and deliver to the election officials of
75 the appropriate precincts, the names of all official write-in
76 candidates and the office sought by each for statewide,
77 district and county offices on the ballot in the precinct for
78 which valid write-in votes will be counted and the names
79 shall be posted at the office where absentee voting is
80 conducted and at the precincts in accordance with section
81 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,

21 candidates to fill the vacancy shall be nominated at the
22 primary election in accordance with the time requirements
23 and the provisions and procedures prescribed in section
24 eleven, article five of this chapter. If the vacancy occurs
25 after the eighty-fourth day before the primary but not
26 later than the eighty-fourth day before the general elec-
27 tion, they shall be nominated by the county executive
28 committee in the manner provided in section nineteen,
29 article five of this chapter, as in the case of filling vacan-
30 cies in nominations, and the names of the persons, so
31 nominated and certified to the clerk of the county commis-
32 sion of the county, shall be placed upon the ballot to be
33 voted at the next general election.

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

Randy White
.....
Chairman Senate Committee

D. Lee Bay
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Barrett Holmes
.....
Clerk of the Senate

Bryce M. Bond
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

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

The within *is approved* this the *4th*
Day of *May*, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 29 2005

Time 9:40am