WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

SENATE BILL NO. 788

(By Senator Oliverio, et al.)

PASSED March 10, 2006

In Effect from Passage
AN ACT to amend and reenact §3-1-46 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-2-5 and §3-2-10 of said code; to amend and reenact §3-3-8 of said code; to amend and reenact §3-5-23 of said code; and to amend and reenact §3-8-10 of said code, all relating generally to elections; establishing training requirements for county clerks; making amendments to conform to requirements of the Help America Vote Act; clarifying requirements for voter registration drives; providing penalties for voter registration violations; clarifying use of excess campaign contribution funds; clarifying processing of absentee ballots; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §3-1-46 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §3-2-5 and §3-2-10 of said code be amended and reenacted; that §3-3-8 of said code be amended and reenacted; that §3-5-23 of said code be amended and
reenacted; and that §3-8-10 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-46. Training program for election officials.

(a) The Secretary of State in conjunction with the State Election Commission shall produce one or more audio-visual programs which explain and illustrate the procedures for conducting elections, the duties of the various election officials and the methods of voting on each voting system in use in the state.

(b) One copy of the appropriate training program shall be distributed to and kept and preserved by the clerk of the county commission of each county. The program shall be shown to all election officials before each election as part of their instructional program. The clerk of the county commission shall conduct an adequate number of sessions to train all election officials shall schedule the regular sessions not less than seven days before each election and shall notify all election officials of the exact date, time and place such instructional program will be conducted.

(c) No person may serve as an election commissioner or poll clerk in any election unless he or she has attended the instructional program required by subsection (a) of this section. If an election official fails to attend the instructional program, another person shall be appointed in the election official's place in the same manner as persons are appointed under the provisions of section thirty of this article to replace election officials refusing to serve and the clerk of the county commission shall conduct an additional instructional program within seven days prior to the election for any such person so appointed: Provided, That in cases of emergency when no person who has attended the instructional program for that election is available to fill a vacancy on the election board, the clerk
of the county commission may appoint such person as a commissioner or poll clerk notwithstanding that such person has not received the instruction.

(d) The requirements of this section apply to all elections conducted by municipalities, except that the recorder or municipal clerk responsible for the election shall perform the duties of the clerk of the county commission defined in this section. The clerk of the county commission may assist the recorder or municipal clerk in conducting the instructional program.

(e) When the instructional program is not being used by the clerk for instructional purposes, it shall be available to any duly organized civic, religious, educational or charitable group without charge, except that the clerk shall require a cash deposit on such use in an amount to be determined by the Secretary of State.

(f) The Secretary of State shall cause the instructional program to be amended, edited or reproduced whenever he or she is of the opinion such revision is necessary in light of changes in the election laws of this state.

(g) No elected official may appear in such program either in person or by visual image or by name.

(h) Every county clerk shall attend a training, to be conducted by the Secretary of State every two years, for the purpose of reviewing the election official training and receiving updates on election law matters.

ARTICLE 2. REGISTRATION OF VOTERS.

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

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

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

(b) Each application form for registration shall include:

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

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

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

(4) The applicant's driver's license number or if the
applicant does not have a driver's license, then the last
cent four digits of the applicant's social security number; and
(5) Any other instructions or information essential to complete the application process.

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

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

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

(3) The applicant's residence address, including the number and street or route and city and county of residence except:

(A) In the case of a person eligible to register under the provisions of 42 U. S. C. §1973ff, et seq., the Uniformed and Overseas Citizens Absentee Voting Act, the address at which he or she last resided before leaving the United States or entering the uniformed services, or if a dependent child of such a person, the address at which his or her parent last resided; and

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

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

(d) The applicant shall be requested to provide the following information, but no application shall be rejected for lack of this information:
(1) An indication whether the application is for a new registration, change of address, change of name or change of party affiliation;

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

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

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

(5) The applicant's telephone number;

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

(7) The applicant's gender.

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

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

(g) No later than the first day of July of each odd-numbered year, the Secretary of State shall submit the specifications of the voter registration application by mail for statewide bidding for a contract period beginning the first day of September of each odd-numbered year and continuing for two calendar years. The successful bidder shall produce and supply the required mail voter registra-
§3-2-10. Application for registration by mail.

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

(b) To the extent possible, with funds allocated annually for such purpose, the Secretary of State shall make state mail registration forms available for distribution through governmental and private entities and organized voter registration programs. The Secretary of State shall make a record of all requests by entities or organizations for two hundred or more forms with a description of the dates and locations in which the proposed registration drive is to be conducted. The Secretary of State shall also require the entity or organization requesting the forms to provide contact information on a form prescribed by the Secretary of State. The Secretary of State may limit the distribution to a reasonable amount per group.

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

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

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

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

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

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

(g) Any person who registers by mail pursuant to this section and who has not previously voted in an election in the state shall be required to present the following forms of identification to the Secretary of State or clerk of the county commission:

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

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

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

(i) Subsection (g) of this section does not apply in the case of a person:

(1) Who registers to vote by mail under 42 U. S. C. §1973gg-4, et seq., and submits as part of his or her registration either a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or government document that shows the name and address of the voter;

(2) (A) Who registers to vote by mail under 42 U. S. C. §1973gg-4, et seq., and submits with his or her registration either a driver's license number or at least the last four digits of the individual's social security number; and (B) with respect to whom the Secretary of State or clerk of the county commission matches the information submitted under paragraph (A) of this subdivision with an existing state identification record bearing the same number, name and date of birth as provided in the registration; or

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

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

(k) On and after the first day of July, two thousand six, any person who agrees to mail or to deliver a signed voter registration application to the Secretary of State or the clerk of the county commission and who intentionally interferes with the applicant's effort to register either by destroying the application or by failing to mail or to deliver the application in a timely manner is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in a jail for not more than one year, or both. For purposes of this subsection, the mailing or delivery of an application is timely if it is mailed or delivered within fifteen days after the applicant signs the application or in accordance with the provisions of article two, chapter three of this code for processing before the closing of the registration records for the pending election, whichever comes first.

(l) On or after the first day of July, two thousand six, any person who intentionally solicits multiple registrations from any one person or who intentionally falsifies a registration application is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in jail for not more than one year, or both.
ARTICLE 3. VOTING BY ABSENTEES.

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

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

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

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

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

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

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

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

(c) In counties using direct recording elections systems, the absentee ballots shall be counted as follows:

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

(2) Each absentee ballot shall be recorded on a direct recording voting terminal designated by the clerk of the county commission as the terminal for absentee tabulations, after being read aloud by a separate team of two representatives of opposite political parties; and

(3) The ballot shall be verified by both teams as being accurately printed on the paper receipt before the ballot is tabulated; and

(4) The appropriate election officials shall follow the procedures set out in subsections (a), (b), (d) and (e), section twenty-seven, article four-a of this chapter and subdivisions (3), (4), (5) and (6), subsection (c) of said section.

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

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

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§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.
44 The clerk of each county commission, upon proper
45 application made as herein provided, shall issue such
46 credentials and shall keep a record thereof.
47 (c) The certificate shall be personally signed by duly
48 registered voters, in their own proper handwriting or by
49 their marks duly witnessed, who must be residents within
50 the county, district or other political division represented
51 by the office sought wherein the canvass or solicitation is
52 made by the person or persons duly authorized. The
53 signatures need not all be on one certificate. The number
54 of signatures shall be equal to not less than two percent of
55 the entire vote cast at the last preceding general election
56 for the office in the state, district, county or other political
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
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.

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 is doubt as to the legitimacy and
the validity of certificate, the Secretary of State may ask
the Attorney General of the state, or the clerk of the
county commission may ask the prosecuting attorney of
the county, to institute a quo warranto proceeding against
the nominee by certificate to determine his or her 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 infor-
mation from any certificate to the county voter registra-
tion records in order to assist in determining the validity
of any certificates.

(f) In addition to penalties prescribed elsewhere for
violation of this chapter, any person violating the provi-
sions of this section 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.

§3-8-10. Use of certain contributions.
(a) Notwithstanding any provision of this code to the contrary, amounts received by a candidate as contributions that are in excess of any amount necessary to defray his or her expenditures may be:

(1) used by the candidate to defray any usual and customary expenses incurred in connection with his or her duties as a holder of public office; and

(2) contributed by the candidate, after the general election, to:

(A) any charitable organization or subsequent campaign by the same candidate, without limitation;

(B) any national committee in accordance with federal requirements;

(C) any state party executive committee or state party legislative caucus committee, in an amount not to exceed fifteen thousand dollars in a calendar year; or

(D) any local committee of any political party or any other candidate for public office, in accordance with the existing limitations on contributions.

(b) The State Election Commission shall promulgate emergency and legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to establish guidelines for the administration of this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 31st Day of March, 2006.

Governor