WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

Senate Bill No. 616

(By Senators Kessler, Edgell, Minard and Hunter)

[Passed March 10, 2007; in effect ninety days from passage.]
AN ACT to repeal §3-4A-11 and §3-4A-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-1-20, §3-1-21 and §3-1-41 of said code; to amend and reenact §3-4A-11a and §3-4A-15 of said code; to amend and reenact §3-5-7, §3-5-10, §3-5-13 and §3-5-19 of said code; and to amend and reenact §3-6-2 and §3-6-3 of said code, all relating to election ballots; providing for two copies of sample ballots for each voting place; providing that paper ballots used in conjunction with electronic voting systems must be prepared for eighty percent of registered voters eligible to vote; providing that the number of regular official ballots packaged for each precinct shall equal at least seventy-five percent of the number of registered
Be it enacted by the Legislature of West Virginia:

That §3-4A-11 and §3-4A-12 of the Code of West Virginia, 1931, as amended, be repealed; that §3-1-20, §3-1-21 and §3-1-41 of said code be amended and reenacted; that §3-4A-11a and §3-4A-15 of said code be amended and reenacted; that §3-5-7, §3-5-10, §3-5-13 and §3-5-19 of said code be amended and reenacted; and that §3-6-2 and §3-6-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

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

(a) The board of ballot commissioners of each county shall provide cards of general information which will include:

(1) The date of the election and the hours during which polling places will be open;
(2) Instruction for mail-in registrants and first-time voters;
(3) Voters' rights; and
(4) Prohibitions against fraud and misrepresentation.
The board of ballot commissioners shall also provide cards of instruction for voters in preparing their ballots and casting a provisional ballot as prescribed by the Secretary of State. The board of ballot commissioners shall furnish a sufficient number of cards to the commissioners of election at the same time they deliver the ballots for the precinct.

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

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

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

(e) During the period of early in-person voting, the clerk of the county commission shall post the cards of general information, a list of official write-in candidates and sample ballots within the area where absentee voting is conducted.

§3-1-21. Printing of official and sample ballots; number; packaging and delivery; correction of ballots.
(a) The board of ballot commissioners for each county shall provide the ballots and sample ballots necessary for conducting every election for public officers in which the voters of the county participate.

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

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

2. The board of ballot commissioners, for any countywide special election ordered by the county commission;

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

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

(c) When paper ballots are used, the total number of regular official ballots printed shall equal one and one-twentieth times the number of registered voters eligible to vote that ballot. When paper ballots are used in conjunction with or as part of an electronic voting system, the total number of regular official ballots printed shall equal at a minimum eighty percent of the number of registered voters eligible to vote that ballot. The clerk of the county commission shall determine the number of absentee official ballots.
(d) The number of regular official ballots packaged for each precinct shall equal at a minimum seventy-five percent of the number of registered voters of the precinct. The remaining regular official ballots shall be packaged and delivered to the clerk of the county commission, who shall retain them unopened until they are required for an emergency. Each package of ballots shall be wrapped and sealed in a manner which will immediately make apparent any attempt to open, alter or tamper with the ballots. Each package of ballots for a precinct shall be clearly labeled, in a manner which cannot be altered, with the county name, the precinct number and the number of ballots contained in each package. If the packaging material conceals the face of the ballot, a sample ballot identical to the official ballots contained therein shall be securely attached to the outside of the package or, in the case of ballot cards, the type of ballot shall be included in the label.

(e) All absentee ballots necessary for conducting absentee voting in all voting systems shall be delivered to the clerk of the county commission of the appropriate county not later than the forty-second day before the election. All official ballots in paper ballot systems shall be delivered to the clerk of the county commission of the appropriate county not later than twenty-eight days before the election.

(f) Upon a finding of the board of ballot commissioners that an official ballot contains an error which, in the opinion of the board, is of sufficient magnitude to confuse or mislead the voters, the board shall cause the error to be corrected either by the reprinting of the ballots or by the use of stickers printed with the correction and of suitable size to be placed over the error without covering any other portion of the
§3-1-41. Challenged and provisional voter procedures; counting of provisional voters' ballots; ballots of election officials.

(a) It is the duty of the members of the receiving board, jointly or severally, to challenge the right of any person requesting a ballot to vote in any election:

(1) If the person's registration record is not available at the time of the election;

(2) If the signature written by the person in the poll book does not correspond with the signature purported to be his or hers on the registration record;

(3) If the registration record of the person indicates any other legal disqualification; or

(4) If any other valid challenge exists against the voter pursuant to section ten, article three of this chapter.

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

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

(d) Provisional ballots may not be counted by the
election officials. The county commission shall, on its
own motion, at the time of canvassing of the election
returns, sit in session to determine the validity of any
challenges according to the provisions of this chapter.
If the county commission determines that the challenges
are unfounded, each provisional ballot of each
challenged voter, if otherwise valid, shall be counted
and tallied together with the regular ballots cast in the
election. The county commission, as the board of
canvassers, shall protect the privacy of each provisional
ballot cast. The county commission shall disregard
technical errors, omissions or oversights if it can
reasonably be ascertained that the challenged voter was
entitled to vote.

(e) Any person duly appointed as an election
commissioner or clerk under the provisions of section
twenty-eight of this article who serves in that capacity
in a precinct other than the precinct in which the person
is legally entitled to vote may cast a provisional ballot
in the precinct in which the person is serving as a
commissioner or clerk. The ballot is not invalid for the
sole reason of having been cast in a precinct other than
the precinct in which the person is legally entitled to
vote. The county commission shall record the
provisional ballot on the voter's permanent registration
record: Provided, That the county commission may
count only the votes for the offices that the voter was
legally authorized to vote for in his or her own precinct.
The Secretary of State shall establish a free access system, which may include a toll-free telephone number or an internet website, that may be accessed by any individual who casts a provisional ballot to discover whether his or her vote was counted and, if not, the reason that the vote was not counted.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the electronic voting system for use in elections.

(b) (1) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office are to conform as nearly as possible to the provisions of sections thirteen and thirteen-a, article five of this chapter.

(2) For the general election, the heading of the ballot, the straight ticket positions, the instructions to straight ticket voters, the type faces, the names and arrangement of offices and the printing of names and the arrangement of candidates within each office are to conform as nearly as possible to the provisions of section two, article six of this chapter, except as otherwise provided in this article.
(3) Nonpartisan elections for board of education and any question to be voted upon are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot wherever a separate ballot is required under the provisions of this chapter.

(4) Both the face and the reverse side of the ballot may contain the names of candidates only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(5) The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words “WRITE-IN, IF ANY” are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the Secretary of State for the various political parties, and the general election ballot is to be printed in black.
ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as provided in section thirteen, article five of this chapter, or are to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

§3-4A-15. Instructions and help to voters; vote-recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.

(a) For the instruction of the voters on any election day in counties utilizing an electronic voting system that uses a screen upon which votes may be recorded by means of a stylus or by means of touch, the ballot commissioners shall provide for each polling place a sample ballot with each screen as it will appear on the devices, together with written instructions regarding the operation of the devices. Upon request, the election officers shall offer instruction to each voter, before voting, in the operation of the vote-recording device.
(b) The ballot commissioners shall also provide facsimile ballots, at least two of which, or complete sets of which, are to be posted on the walls of each polling place. The facsimile diagrams are exact diagrams of the ballots or screens so that the voter may become familiar with the location of the parties, offices, candidates and questions as they appear on the ballot to be used in his or her precinct.

(c) The ballot commissioners may, with the consent of the county commission, or the county commission may, prepare and mail to each qualified voter at the address shown on the registration books a facsimile sample of the ballot or screens for his or her precinct.

(d) In counties where an electronic voting system has been adopted, the legal ballot advertisements required by articles five and six of this chapter, which specify the publication of a facsimile sample ballot, are to consist of a facsimile of the ballot or screens with the names of the candidates and the offices for which they are running shown in their proper positions.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) The words "subscribed and sworn to before me this _____day of ______________, 20____" and a space for the signature of the officer giving the oath.
(e) The Secretary of State or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a certified copy of the voter's registration record of the candidate showing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the sixty days immediately preceding the filing of the certificate: Provided, That unless a signed formal complaint of violation of this section and the certified copy of the voter's registration record of the candidate are filed with the officer receiving that candidate's certificate of announcement no later than ten days following the close of the filing period, the candidate shall not be refused certification for this reason.

(f) The certificate of announcement shall be subscribed and sworn to by the candidate before some officer qualified to administer oaths, who shall certify the same. Any person who knowingly provides false information on the certificate is guilty of false swearing and shall be punished in accordance with section three, article nine of this chapter.

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

(h) No person shall be a candidate for more than one office or office division at any election: Provided, That a candidate for an office may also be a candidate for president of the United States, for membership on political party executive committees or for delegate to a political party national convention.

(i) Any candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by section eleven, article five of this chapter, from all but one office prior to the close of the filing period shall not be certified by the Secretary of State or placed on the ballot for any office by the board of ballot commissioners.

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

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

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

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

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

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

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

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

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

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

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

(3) The publication of the official list of candidates for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows: (A) The words "official list of candidates", the name of the county, the words "primary election", the date of the election, the name of the political party or the designation of nonpartisan candidates shall be printed in all capital letters and in bold type no smaller than fourteen point. The designation of the national, state, district or other tickets shall be printed in all capital letters in type no
§3-5-13. Form and contents of ballots.

1 The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

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

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

(B) For voting machines, electronic voting devices and any ballot tabulated by electronic means, the offices are to appear in the same sequence as prescribed in section thirteen-a of this article and under the same headings as
prescribed in subsection (a) of this section. The number
of pages, columns or rows, where applicable, may be
modified to meet the limitations of ballot size and
composition requirements subject to approval by the
Secretary of State.

(C) The title of each office is to be separated from
preceding offices or candidates by a line and is to be
printed in bold type no smaller than eight point. Below
the office is to be printed the number of the district, if
any, the number of the division, if any, and the words
"Vote for _______" with the number to be nominated or
elected or "Vote For Not More Than _______" in
multicandidate elections. For offices in which there are
limitations relating to the number of candidates which
may be nominated, elected or appointed to or hold office
at one time from a political subdivision within the
district or county in which they are elected, there is to
be a clear explanation of the limitation, as prescribed by
the Secretary of State, printed in bold type immediately
preceding the names of the candidates for those offices
on the ballot in every voting system. For counties in
which the number of county commissioners exceeds
three and the total number of members of the county
commission is equal to the number of magisterial
districts within the county, the office of county
commission is to be listed separately for each district to
be filled with the name of the magisterial district and
the words "Vote for One" printed below the name of the
office: Provided, That the office title and applicable
instructions may span the width of the ballot so as it is
centered among the respective columns.

(D) The location for indicating the voter's choices on
the ballot is to be clearly shown. For paper ballots,
other than those tabulated electronically, the official
primary ballot is to contain a square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names.

(3) (A) The name of every candidate certified by the Secretary of State or the board of ballot commissioners is to be printed in capital letters in no smaller than eight-point type on the ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State, the name of each candidate is to appear in the form set out by the candidate on the certificate of announcement, but in no case may the name misrepresent the identity of the candidate nor may the name include any title, position, rank, degree or nickname implying or inferring any status as a member of a class or group or affiliation with any system of belief.

(B) The city of residence of every candidate, the state of residence of every candidate residing outside the state, the county of residence of every candidate for an office on the ballot in more than one county and the magisterial district of residence of every candidate for an office subject to magisterial district limitations are to be printed in lower case letters beneath the names of the candidates.

(C) The arrangement of names within each office must be determined as prescribed in section thirteen-a of this article.

(D) If the number of candidates for an office exceeds the space available on a column or ballot page and requires that candidates for a single office be separated, to the extent possible, the number of candidates for the
office on separate columns or pages are to be nearly equal and clear instructions given the voter that the candidates for the office are continued on the following column or page.

(4) When an insufficient number of candidates has filed for a party to make the number of nominations allowed for the office or for the voters to elect sufficient members to the board of education or to executive committees, the vacant positions on the ballot shall be filled with the words "No Candidate Filed": Provided, That in paper ballot systems which allow for write-ins to be made directly on the ballot, a blank line shall be placed in any vacant position in the office of board of education or for election to any party executive committee. A line shall separate each candidate from every other candidate for the same office. Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words "No Candidate Filed" may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

(5) In presidential election years, the words "For election in accordance with the plan adopted by the party and filed with the Secretary of State" is to be printed following the names of all candidates for delegate to national convention.

(6) All paper ballots are to be printed in black ink on paper sufficiently thick so that the printing or marking cannot be discernible from the back. Ballot cards and paper for printing ballots using electronically sensible
ink are to meet minimum requirements of the tabulating systems and are to conform in size and weight to ensure ease in tabulation.

(7) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with unique sequential numbers from one to the highest number representing the total number of ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

(8) On the back of every official ballot or ballot card the words “Official Ballot” with the name of the county and the date of the election are to be printed. Beneath the date of the election there are to be two blank lines followed by the words “Poll Clerks”.

(9) The face of sample paper ballots and sample ballot labels are to be like other official ballots or ballot labels except that the word “sample” is to be prominently printed across the front of the ballot in a manner that ensures the names of candidates are not obscured and the word “sample” may be printed in red ink. No printing may be placed on the back of the sample.

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

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

(1) Each appointment made under this section shall be
made by the executive committee of the political party
for the political division in which the vacancy occurs:

Provided, That if the executive committee holds a duly
called meeting in accordance with section nine, article
one of this chapter but fails to make an appointment or
fails to certify the appointment of the candidate to the
proper filing officer within the time required, the
chairperson of the executive committee may make the
appointment not later than two days following the
deadline for the executive committee.

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

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

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

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

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

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

(b) Except as otherwise provided in article ten of this
chapter, if any vacancy occurs in a partisan office or
position other than political party executive committee,
which creates an unexpired term for a position which
would not otherwise appear on the ballot in the general
election, and the vacancy occurs after the close of
candidate filing for the primary election but not later
than eighty-four days before the general election, a
nominee of each political party may be appointed by the
executive committee and certified to the proper filing
officer no later than seventy-eight days before the
general election. Appointments shall be filed in the
same manner as provided in subsection (a) of this
section, except that the filing fee shall be paid before
the appointment is complete.
109 (c) When a vacancy occurs in the board of education
110 after the close of candidate filing for the primary
111 election but not later than eighty-four days before the
112 general election, a special candidate filing period shall
113 be established. Candidates seeking election to any
114 unexpired term for board of education shall file a
115 certificate of announcement and pay the filing fee to the
116 clerk of the county commission no earlier than the first
117 Monday in August and no later than seventy-seven days
118 before the general election.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-2. Preparation and form of general election ballots.

1 (a) All ballots prepared under the provisions of this
2 section are to contain:

3 (1) The name and ticket of each party which is a
4 political party under the provisions of section eight,
5 article one of this chapter;

6 (2) The name chosen as the party name by each group
7 of citizens which has secured nomination for two or
8 more candidates by petition under the provisions of
9 section twenty-three of this article;

10 (3) The names of every candidate for any office to be
11 voted for at the election whose nomination in the
12 primary election, nomination by petition or nomination
13 by appointment to fill a vacancy on the ballot has been
14 certified and filed according to law and no others.

15 (b) The provisions of paragraphs (C) and (D),
16 subdivision (2), section thirteen, article five of this
17 chapter; subdivision (3) of said section; paragraphs (A)
and (B), subdivision (4) of said section; and subdivisions (6), (7), (8) and (9) of said section pertaining to the preparation and form of primary election ballots shall likewise apply to general election ballots.

(c) (1) For all ballot systems, the ballot heading is to be in display type and contain the words “Official Ballot, General Election” and the name of the county and the month, day and year of the election.

(2) After the heading, each ballot is to contain, laid out in parallel columns, rows or pages as required by the particular voting system, the party emblem, the position for straight party voting for each party and the name of each party as prescribed in subsection (a) of this section. On paper ballots, the position for straight party voting is to be a heavy circle, three-fourths inch in diameter, surrounded by the words “For a straight ticket mark within this circle” printed in bold six-point type. On all other ballots or ballot labels, the positions for straight party voting is to be marked “Straight Party Ticket”.

(3) The party whose candidate for president received the highest number of votes at the last preceding presidential election is to be placed in the left, or first column, row or page, as is appropriate to the voting system. The party which received the second highest vote is to be next and so on. Any groups or third parties which did not have a candidate for president on the ballot in the previous presidential election are to be placed in the sequence in which the final certificates of nomination by petition were filed.

(4) (A) The following general instructions for straight party voters are to be printed in no smaller than eight-point bold type: “IF YOU MARKED A
STRAIGHT TICKET: When you mark any individual candidate in a different party, that vote will override your straight party vote for that office. When you mark any individual candidate in a different party for an office where more than one will be elected, YOU MUST MARK EACH OF YOUR CHOICES FOR THAT OFFICE because your straight ticket vote will not be counted for that office”. The last sentence of the instructions may not be included on any ballot which does not contain any office or division where more than one candidate will be elected.

On paper ballots, the general instructions are to be placed below the party name and across the top of all columns, followed by a heavy line separating them from the rest of the ballot: Provided, That the instructions may be centered among the columns running the full width of the ballot. On ballots marked with electronically sensible ink, the general instructions are to be placed after the position for straight voting and before any office.

(B) The following specific instructions are to be printed on the ballot for any partisan election for an office or division to which more than one candidate is to be elected: “If you marked a straight ticket and you mark any candidate in a different party for this office, you must mark all your choices for this office because your straight ticket vote will not be counted for this office”.

On paper ballots, the specific instructions are to be placed below the office name of any partisan office where more than one is to be elected and across the top of all columns for that office or centered among the columns before the names of any candidates. On all
other ballots and ballot labels, the specific instructions are to be placed above or to the side of the names of the candidates as the voting system requires.

(5) For all ballots, any columns, rows or sections in which the ticket of one party appears are to be clearly separated from the other columns, rows or sections by a heavy line or other clear division. For each party, the offices are to be arranged in the order prescribed in section thirteen-a, article five of this chapter under the appropriate tickets, which are to be headed "National Ticket", "State Ticket" and "County Ticket". The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements, subject to approval by the Secretary of State.

(d) The arrangement of names within each office for all ballot systems is to be as follows:

(1) In elections for presidential electors, the names of the candidates for president and vice president of each party are to be placed beside a brace with a single voting position, so that a vote for any presidential candidate is a vote for the electors of the party for which the candidates were named.

(2) The order of names of candidates for any office or division for which more than one is to be elected is determined as prescribed in section thirteen-a, article five of this chapter: Provided, That the drawing by lot is to be conducted on the seventieth day next preceding the date of the general election, beginning at 9:00 a. m.

(3) In any office where more than one person is to be elected, the names of the candidates for the office are to
be staggered so that no two candidates for that office appear directly opposite any other candidate, as shown in the example below: Provided, That if the voting system cannot accurately tabulate any ballot due to this requirement, the ballot may be adjusted so that it is accurately tabulated. However, each candidate shall be separated by a thin line to distinguish between each candidate.

For House of Delegates
First Delegate District (Vote For Not More Than Two)

SUSAN B. ANTHONY City (County)

JOHN ADAMS City (County)

ABRAHAM LINCOLN City (County)

JAMES MONROE City (County)

(4) Each voting system is to provide a means for voters to vote for any person whose name does not appear on the ticket by writing it with pen or pencil or by using stamps, stickers, tapes, labels or other means of writing in the name of a candidate which does not interfere with the tabulation of the ballot.

(A) In paper ballot systems which allow for write-ins to be made directly on the ballot, a blank square and a blank line equal to the space which would be occupied by the name of the candidate is to be placed under the proper office for each vacancy in nomination and for an office for which more than one is to be elected, any
vacancy is to appear after any other candidates for the office. If no write-in lines are included on the ballot, specific instructions are to be added to the top of the ballot notifying the voter that a write-in vote may be cast by writing the name and office on any location on the front of the ballot.

(B) In machine and electronically tabulated ballot systems in which write-in votes must be made in a place other than on the ballot, if there is a vacancy in nomination leaving fewer candidates in any party than can be elected to that office, the words "No Candidate Nominated" is to be printed in the space that would be occupied by the name of the candidate and for an office for which more than one is to be elected, any vacancy is to appear after any other candidates for the office. Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words "No Candidate Filed" may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

(5) In a general election in any county in which unexpired terms of the board of education are to be filled by election, a separate section or page of the ballot is to be set off by means clearly separating the nonpartisan ballot from the ballot for the political party candidates and is to be headed "Nonpartisan Board of Education".

(e) Any constitutional amendment is to be placed following all offices, followed by any other issue upon which the voters are to cast a vote. The heading for
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178 each amendment or issue is to be printed in large, bold
179 type according to the requirements of the resolution
180 authorizing the election.

181 (f) The board of ballot commissioners may not place
182 any issue on the ballot for election which is not
183 specifically authorized under the West Virginia
184 Constitution or statutes or which has not been properly
185 ordered by the appropriate governmental body charged
186 with calling the election.

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

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

(b) The facsimile sample general election ballot shall
10 be published as follows:

(1) For counties in which two or more qualified
13 newspapers publish a daily newspaper, not more than
14 twenty-six nor less than twenty days preceding the
15 general election, the ballot commissioners shall publish
16 the sample official general election ballot as a Class I-0
17 legal advertisement in the two qualified daily
18 newspapers of different political parties within the
19 county having the largest circulation in compliance with
20 the provisions of article three, chapter fifty-nine of this
21 code;
(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, not more than twenty-six nor less than twenty days preceding the primary election, the ballot commissioners shall publish the sample official general election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code; and

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

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

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

(2) The order of the straight ticket positions, offices and candidates for each office and the manner of designating the parties shall be as follows:

(A) The straight ticket positions shall be designated “straight (party name) ticket”, with the parties listed in the order in which they appear on the ballot, from left to right or from top to bottom, as the case may be;

(B) The offices shall be listed in the same order in which they appear on the ballot;

(C) The candidates within each office for which one is to be elected shall be listed in the order they appear on the ballot, from left to right or from top to bottom, as the case may be, and the candidate's political party affiliation or independent status shall be indicated by the one or two letter initial specifying the affiliation, placed in parenthesis to the right of the candidate's name; and
(D) The candidates within each office for which more than one is to be elected shall be arranged by political party groups in the order they appear on the ballot and the candidate's affiliation shall be indicated as provided in paragraph (C) of this subdivision.

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

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

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

(3) The publication of the official list of nominees for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows:
(A) The words “official list of nominees and issues”, the name of the county, the words “General Election” and the date of the election shall be printed in all capital letters and in bold type no smaller than fourteen point;

(B) The designation of the straight ticket party positions shall be printed in all capital letters in bold type no smaller than twelve point and the title of the office shall be printed in bold type no smaller than twelve point and any voting instructions or other language printed below the title shall be printed in bold type no smaller than ten point; and

(C) The names of the candidates and the initial within parenthesis designating the candidate’s affiliation shall be printed in all capital letters in bold type no smaller than ten point and the residence information shall be printed in type no smaller than ten point; and

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

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, beginning with the general election to be held in the year two thousand, the ballot commissioners of any county may choose to publish a facsimile sample general election ballot, instead of the official list of candidates and issues, for purposes of the last publication required before any general election.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved. this
the 3rd Day of April, 2007.

Governor