

HB 2926  
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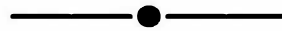
FILED

2009 JUN -5 PM 4: 08

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

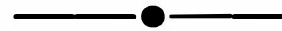
FIRST REGULAR SESSION, 2009



# SECOND ENROLLMENT

COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 2926

(By Delegate Manchin)



Amended and again passed May 27, 2009,  
as a result of the objections of the Governor

In Effect Ninety Days From Passage

FILED

**S E C O N D**

2009 JUN -5 PM 4: 08

**E N R O L L M E N T**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

COMMITTEE SUBSTITUTE

FOR

**H. B. 2926**

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(BY DELEGATE MANCHIN)

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[Amended and again passed May 27, 2009, as a result of the objections of the Governor; in effect ninety days from passage.]

AN ACT to amend and reenact §3-5-4 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §7-1-1b and §7-1-15, all relating to elections of county commissioners; providing legislative findings; clarifying residency requirements; and establishing a procedure for challenging a county commission candidate's qualifications for elected office.

*Be it enacted by the Legislature of West Virginia:*

That §3-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and to amend said code by adding thereto two new sections, designated §7-1-1b and §7-1-15, all to read as follows:

83:4 119 6-4 11  
**CHAPTER 3. ELECTIONS.**

**ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

**§3-5-4. Nomination of candidates in primary elections.**

1           (a) At each primary election, the candidate or candidates  
2 of each political party for all offices to be filled at the ensuing  
3 general election by the voters of the entire state, of each  
4 congressional district, of each state senatorial district, of each  
5 delegate district, of each judicial circuit of West Virginia, of  
6 each county, and of each magisterial district in the state shall  
7 be nominated by the voters of the different political parties,  
8 except that no presidential elector shall be nominated at a  
9 primary election.

10           (b) In primary elections a plurality of the votes cast shall  
11 be sufficient for the nomination of candidates for office.  
12 Where only one candidate of a political party for any office  
13 in a political division, including party committeemen and  
14 delegates to national conventions, is to be chosen, or where  
15 a judicial circuit has two or more circuit judges and one  
16 circuit judge is to be chosen for each numbered division  
17 within the circuit, the candidate receiving the highest number  
18 of votes therefor in the primary election shall be declared the  
19 party nominee for such office. Where two or more such  
20 candidates are to be chosen in the primary election, the  
21 candidates constituting the proper number to be so chosen  
22 who shall receive the highest number of votes cast in the  
23 political division in which they are candidates shall be  
24 declared the party nominees and choices for such offices,  
25 except that:

26           (1) Candidates for the office of commissioner of the  
27 county commission shall be nominated and elected in  
28 accordance with the provisions of section ten, article nine of

29 the Constitution of the state of West Virginia and the  
30 requirements of section one-b, article one, chapter seven;

31 (2) Members of county boards of education shall be  
32 elected at primary elections in accordance with the provisions  
33 of sections five and six of this article;

34 (3) Candidates for the House of Delegates shall be  
35 nominated and elected in accordance with the residence  
36 restrictions provided in section two, article two, chapter one  
37 of this code; and

38 (4) In judicial circuits having numbered divisions, each  
39 numbered division shall be tallied separately and the  
40 candidate in each division receiving a plurality of the votes  
41 cast shall be declared the party nominee for the office in that  
42 numbered division.

43 (c) In case of tie votes between candidates for party  
44 nominations or elections in primary elections, the choice of  
45 the political party shall be determined by the executive  
46 committee of the party for the political division in which such  
47 persons are candidates.

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

#### **§7-1-1b. Legislative findings; qualifications for county commissioners.**

1 (a) The Legislature finds that:

2 (1) There is confusion concerning when a candidate for  
3 county commission must be a resident of the magisterial  
4 district he or she wants to represent;

5 (2) The supreme court has discussed the residency  
6 requirement in several cases and has conflicting  
7 interpretations;

8 (3) It is imperative that this issue be permanently  
9 resolved at the time of filing to ensure the citizens have  
10 choice on the ballot;

11 (4) It is essential the citizens know they are voting for a  
12 person who is qualified to be a candidate; and

13 (5) With the expense of holding an election, tax payer  
14 moneys should not be wasted of officials who could never  
15 serve.

16 (b) A candidate for the office of county commissioner  
17 shall be a resident from the magisterial district for which he  
18 or she is seeking election:

19 (1) by the last day to file a certificate of announcement  
20 pursuant to section seven, article five, chapter three of this  
21 code; or

22 (2) at the time of his or her appointment by the county  
23 executive committee or the chairperson of the county  
24 executive committee.

**§7-1-15. Challenge of candidate for county commission;  
residency.**

1 (a) (1) Any person desiring to contest the qualifications  
2 of another person whose nomination in the primary election,  
3 nomination by petition, or nomination by appointment to fill  
4 a vacancy on the ballot, has been certified and filed pursuant  
5 to article five, chapter three of this Code, as a candidate for  
6 the office of county commission at a general election, shall  
7 file a verified petition specifically setting forth the grounds of

8 the challenge not later than thirty days after the date of the  
9 primary election.

10 (2) The court may permit a petition to be filed after the  
11 thirtieth day after the primary election upon a finding that the  
12 petitioner was unable to discover the grounds for challenging  
13 the qualifications of the candidate prior to the thirtieth after  
14 the primary election despite the exercise of reasonable  
15 diligence.

16 (3) The petition shall be filed with the circuit court of  
17 the county in which the candidate is seeking office.

18 (b) The circuit court shall at the earliest possible date set  
19 the matter for hearing, but in no event shall the hearing be  
20 held later than thirty days after the filing of the petition.

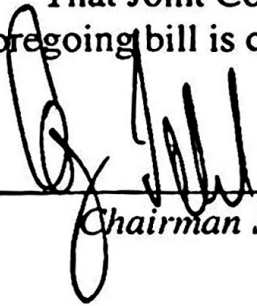
21 (c) The matter shall be tried by the circuit judge, without  
22 a jury. After hearing the evidence, the circuit judge shall  
23 determine whether the candidate whose qualifications have  
24 been challenged is legally qualified to have his or her name  
25 placed upon the ballot in question. The circuit judge shall  
26 issue a written decision on each challenge by separately  
27 stating findings of facts, conclusions of law within ten days  
28 of the conclusion of the hearing.

29 (d) The burden of proof shall be upon the petitioner,  
30 who must show by a preponderance of the evidence of the  
31 record as a whole that the candidate is not qualified to be a  
32 candidate for county commission.

33 (e) Within five days after judgment is rendered by the  
34 circuit court, the petitioner or the candidate, or both, may file  
35 an appeal in the Supreme Court upon giving a cost bond in  
36 the sum of \$300. The appeal shall be immediately docketed  
37 in the Supreme Court and shall be decided at the earliest  
38 possible date, as a preference case over all others.

39           (f) The procedure set forth above shall be the sole and  
40 only manner in which the qualifications of a candidate for  
41 county commission may be challenged prior to the time of his  
42 or her election. After any such person has been elected to  
43 public office, the election may be challenged as otherwise  
44 provided by law. After any person assumes an elective office,  
45 his or her qualifications to hold that office may be contested  
46 as otherwise provided by law.

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

  
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Chairman Senate Committee

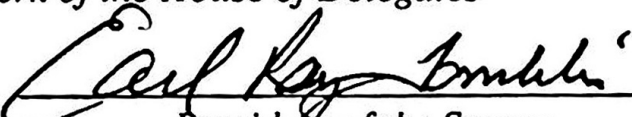
  
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Chairman House Committee

Originating in the House.

In effect ninety days from passage.

  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 5<sup>th</sup>  
day of June, 2009.

  
\_\_\_\_\_  
Governor



PRESENTED TO THE  
GOVERNOR

JUN - 1 2009

Time 10:10a