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:
CHAPTER 3. ELECTIONS.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

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

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

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

(1) Candidates for the office of commissioner of the county commission shall be nominated and elected in accordance with the provisions of section ten, article nine of
(2) Members of county boards of education shall be elected at primary elections in accordance with the provisions of sections five and six of this article;

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

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

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

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

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

(a) The Legislature finds that:

(1) There is confusion concerning when a candidate for county commission must be a resident of the magisterial district he or she wants to represent;
(2) The supreme court has discussed the residency requirement in several cases and has conflicting interpretations;

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

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

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

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

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

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

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

(a) (1) Any person desiring to contest the qualifications of another person whose nomination in the primary election, nomination by petition, or nomination by appointment to fill a vacancy on the ballot, has been certified and filed pursuant to article five, chapter three of this Code, as a candidate for the office of county commission at a general election, shall file a verified petition specifically setting forth the grounds of
8 the challenge not later than thirty days after the date of the primary election.

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

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

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

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

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

33 (e) Within five days after judgment is rendered by the circuit court, the petitioner or the candidate, or both, may file an appeal in the Supreme Court upon giving a cost bond in the sum of $300. The appeal shall be immediately docketed in the Supreme Court and shall be decided at the earliest possible date, as a preference case over all others.
(f) The procedure set forth above shall be the sole and only manner in which the qualifications of a candidate for county commission may be challenged prior to the time of his or her election. After any such person has been elected to public office, the election may be challenged as otherwise provided by law. After any person assumes an elective office, his or her qualifications to hold that office may be contested as otherwise provided by law.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

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 5th day of June, 2009.

Governor
PRESENTED TO THE GOVERNOR

JUN - 1 2009

Time 10:10a