ENROLLED

House Bill No. 4589

(By Delegates Iaquinta, Longstreth, Duke, Ellem and Frazier)

Passed March 12, 2010

In Effect Ninety Days From Passage
AN ACT to amend and reenact §3-3-2, §3-3-2b, §3-3-5 and §3-3-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-4-10 of said code; and to amend and reenact §3-5-13 of said code, all relating to conforming the appropriate sections to the requirements of the Military and Overseas Voter Empowerment Act of 2009.

Be it enacted by the Legislature of West Virginia:

That §3-3-2, §3-3-2b, §3-3-5 and §3-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §3-4-10 of said code be amended and reenacted; that §3-5-13 of said code be amended and reenacted, all to read as follows:

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-2. Authority to conduct absentee voting; absentee voting application; form.

(a) Absentee voting is to be supervised and conducted by the proper official for the political division in which the election is held, in conjunction with the ballot commissioners appointed from each political party, as follows:
(1) For any election held throughout the county, within a political subdivision or territory other than a municipality, or within a municipality when the municipal election is conducted in conjunction with a county election, the clerk of the county commission; or

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

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

(1) The completed application is to be on a form prescribed by the Secretary of State and is to contain the name, date of birth and political affiliation of the voter, residence address within the county, the address to which the ballot is to be mailed, the authorized reason, if any, for which the absentee ballot is requested and, if the reason is illness or hospitalization, the name and telephone number of the attending physician, the signature of the voter to a declaration made under the penalties for false swearing as provided in section three, article nine of this chapter that the statements and declarations contained in the application are true, any additional information which the voter is required to supply, any affidavit which may be required and an indication as to whether it is an application for voting in person or by mail; or
(2) For any person authorized to vote an absentee ballot under the provisions of 42 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, the completed application may be on the federal postcard application for absentee ballot form issued under authority of that act, submitted by mail or electronically; or

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

§3-3-2b. Special absentee voting list.

(a) Any person who is registered and otherwise qualified to vote and who is permanently and totally physically disabled and who is unable to vote in person at the polls in an election may apply to the official designated to supervise and conduct absentee voting for placement on the special absentee voting list.

(b) The application is to be on a form prescribed by the Secretary of State which is to include the voter's name and signature, residence address, a statement that the voter is permanently and totally physically disabled and would be unable to vote in person at the polls in any election, a description of the nature of that disability, and a statement signed by a physician to that effect.

(c) Upon receipt of a properly completed application, the official designated to supervise and conduct absentee voting shall enter the name on the special absentee voting list, which is to be maintained in a secure and permanent record. The
person's name will remain active on the list until: (1) The person requests in writing that his or her name be removed; (2) the person removes his or her residence from the county, is purged from the voter registration books or otherwise becomes ineligible to vote; (3) a ballot mailed to the address provided on the application is returned undeliverable by the United States postal service; or (4) the death of the person.

(d) The official designated to supervise and conduct absentee voting shall mail an application for an absentee ballot by mail to each person active on the special absentee voting list not later than forty-six days before each election.

§3-3-5. Voting an absentee ballot by mail or electronically; penalties.

(a) Upon oral or written request, the official designated to supervise and conduct absentee voting shall provide to any voter of the county, in person, by mail, or electronically the appropriate application for voting absentee by mail as provided in this article. The voter shall complete and sign the application in his or her own handwriting or, if the voter is unable to complete the application because of illiteracy or physical disability, the person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided.

(b) Completed applications for voting an absentee ballot by mail are to be accepted when received by the official designated to supervise and conduct absentee voting in person, by mail, or electronically within the following times:

(1) For persons eligible to vote an absentee ballot under the provisions of subdivision (3), subsection (b), section one of this article, relating to absent uniformed services and overseas voters, not earlier than January 1 of an election year...
or eighty-four days preceding the election, whichever is
earlier, and not later than the sixth day preceding the election,
which application is to, upon the voter's request, be accepted
as an application for the ballots for all elections in the
calendar year; and

(2) For all other persons eligible to vote an absentee
ballot by mail, not earlier than eighty-four days preceding the
election and not later than the sixth day preceding the
election.

(c) Upon acceptance of a completed application, the
official designated to supervise and conduct absentee voting
shall determine whether the following requirements have
been met:

(1) The application has been completed as required by
law;

(2) The applicant is duly registered to vote in the precinct
of his or her residence and, in a primary election, is qualified
to vote the ballot of the political party requested;

(3) The applicant is authorized for the reasons given in
the application to vote an absentee ballot by mail;

(4) The address to which the ballot is to be mailed is an
address outside the county if the voter is applying to vote by
mail under the provisions of paragraph (A) or (B),
subdivision (2), subsection (b), section one of this article; or
subdivision (3) or (4) of said subsection;

(5) The applicant is not making his or her first vote after
having registered by postcard registration or, if the applicant
is making his or her first vote after having registered by
postcard registration, the applicant is exempt from these
requirements; and
(6) No regular and repeated pattern of applications for an absentee ballot by mail for the reason of being out of the county during the entire period of voting in person exists to suggest that the applicant is no longer a resident of the county.

(d) If the official designated to supervise and conduct absentee voting determines that the required conditions have been met, two representatives that are registered to vote with different political party affiliations shall sign their names in the places indicated on the back of the official ballot. If the official designated to supervise and conduct absentee voting determines the required conditions have not been met, or has evidence that any of the information contained in the application is not true, the official shall give notice to the voter that the voter's absentee ballot will be challenged as provided in this article and shall enter that challenge.

(e) (1) Within one day after the official designated to supervise and conduct absentee voting has both the completed application and the ballot, the official shall mail to the voter at the address given on the application the following items as required and as prescribed by the Secretary of State:

(A) One of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(B) One envelope, unsealed, which may have no marks except the designation “Absent Voter’s Ballot Envelope No. 1” and printed instructions to the voter;

(C) One postage paid envelope, unsealed, designated “Absent Voter’s Ballot Envelope No. 2”;

(D) Instructions for voting absentee by mail;
(E) For electronic systems, a device for marking by electronically sensible pen or ink, as may be appropriate;

(F) Notice that a list of write-in candidates is available upon request; and

(G) Any other supplies required for voting in the particular voting system.

(2) If the voter is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. §1973, et seq., the official designated to supervise and conduct absentee voting shall transmit the ballot to the voter via mail, or electronically as requested by the voter. If the voter does not designate a preference for transmittal, the clerk may select either method of transmittal for the ballot. If the ballot is transmitted electronically pursuant to this subdivision, the official designated to supervise and conduct absentee voting shall also transmit electronically:

(A) A waiver of privacy form, to be promulgated by the Secretary of State;

(B) Instructions for voting absentee utilizing a federally approved system for voting by mail or electronically;

(C) Notice that a list of write-in candidates is available upon request; and

(D) Statement of the voter affirming the voter’s current name and address and whether or not he or she received assistance in voting.

(f) The voter shall mark the ballot alone: Provided, That the voter may have assistance in voting according to the provisions of section six of this article.
(1) After the voter has voted the ballot or ballots to be returned by mail, the voter shall:

(A) Place the ballot or ballots in envelope no. 1 and seal that envelope;

(B) Place the sealed envelope no. 1 in envelope no. 2 and seal that envelope;

(C) Complete and sign the forms on envelope no. 2; and

(D) Return that envelope to the official designated to supervise and conduct absentee voting.

(2) If the ballot was transmitted electronically as provided in subdivision (2), subsection (e) of this section, the voter shall return the ballot in the same manner the ballot was received, or the voter may return the ballot by United States mail, along with a signed privacy waiver form.

(g) Except as provided in subsection (h) of this section, absentee ballots returned by United States mail or other express shipping service are to be accepted if:

(1) The ballot is received by the official designated to supervise and conduct absentee voting no later than the day after the election; or

(2) The ballot bears a postmark of the United States Postal Service dated no later than election day and the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

(h) Absentee ballots received through the United States mail from persons eligible to vote an absentee ballot under the provisions of subdivision (3), subsection (b), section one
of this article, relating to uniform services and overseas
voters, are to be accepted if the ballot is received by the
official designated to supervise and conduct absentee voting
no later than the hour at which the board of canvassers
convenes to begin the canvass.

(i) Voted ballots submitted electronically pursuant to
subdivision (2), subsection (f) of this section are to be
accepted if the ballot is received by the official designated to
supervise and conduct absentee voting no later than the close
of polls on election day: Provided, That the Secretary of
State's office shall enter into an agreement with the Federal
Voting Assistance Program of the United States Department
of Defense to transmit the ballots to the county clerks at a
time when two individuals of opposite political parties are
available to process the received ballots.

(j) Ballots received after the proper time which cannot be
accepted are to be placed unopened in an envelope marked
for the purpose and kept secure for twenty-two months
following the election, after which time they are to be
destroyed without being opened.

(k) Absentee ballots which are hand delivered are to be
accepted if they are received by the official designated to
supervise and conduct absentee voting no later than the day
preceding the election: Provided, That no person may hand
deliver more than two absentee ballots in any election and
any person hand delivering an absentee ballot is required to
certify that he or she has not examined or altered the ballot.
Any person who makes a false certification violates the
provisions of article nine of this chapter and is subject to
those provisions.

(l) Upon receipt of the sealed envelope, the official
designated to supervise and conduct absentee voting shall:
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(1) Enter onto the envelope any other required information;

(2) Enter the challenge, if any, to the ballot;

(3) Enter the required information into the permanent record of persons applying for and voting an absentee ballot in person; and

(4) Place the sealed envelope into a ballot box that is secured by two locks with a key to one lock kept by the president of the county commission and a key to the other lock kept by the county clerk.

(m) Upon receipt of a ballot submitted electronically pursuant to subdivision (2), subsection (f) of this section, the official designated to supervise and conduct absentee voting shall place the ballot in an envelope marked “Absentee by Electronic Means” with the completed waiver: Provided, That no ballots are to be processed without the presence of two individuals of opposite political parties.

(n) All ballots received electronically prior to the close of the polls on election day are to be tabulated in the manner prescribed for tabulating absentee ballots submitted by mail to the extent that those procedures are appropriate for the applicable voting system. The clerk of the county commission shall keep a record of absentee ballots sent and received electronically.

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

(a) Absent voters’ ballots are to be in all respects like other ballots. Not less than seventy days before the date on which any primary, general or special election is to be held,
unless a lesser number of days is provided in any specific election law in which case the lesser number of days applies, the clerks of the county commissions of the several counties shall estimate and determine the number of absent voters’ ballots of all kinds which will be required in their respective counties for that election. The ballots for the election of all officers, or the ratification, acceptance or rejection of any measure, proposition or other public question to be voted on by the voters, are to be prepared and printed under the direction of the board of ballot commissioners constituted as provided in article one of this chapter. The several county boards of ballot commissioners shall prepare and have printed, in the number they may determine, absent voters’ ballots that are to be printed under their directions as provided in this chapter and those ballots are to be delivered to the clerk of the county commission of the county not less than forty-six days before the day of the election at which they are to be used.

(b) The official designated to supervise and conduct absentee voting shall be responsible for the mailing, transmitting, receiving, delivering and otherwise handling of all absent voters’ ballots. He or she shall keep a record, as may be prescribed by the Secretary of State, of all ballots delivered for the purpose of absentee voting, as well as all ballots, if any, marked before him or her and shall deliver to the commissioner of election a certificate stating the number of ballots delivered, transmitted, or mailed to absent voters and those marked before him or her, if any, and the names of the voters to whom those ballots have been delivered, transmitted, or mailed or by whom they have been marked, if marked before him or her.

ARTICLE 4. VOTING MACHINES.

§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.
(a) The ballot commissioners of any county in which voting machines are to be used in any election shall cause to be printed for use in the election the ballot labels for the voting machines and paper ballots for absentee voting, voting by persons unable to use the voting machine and provisional ballots or if an electronic voting system or direct recording election equipment is to be used in an election, the ballot commissioners shall comply with requirements of section eleven, article four-a of this chapter. The labels shall be clearly printed in black ink on clear white material in a size that will fit the ballot frames. The paper ballots shall be printed in compliance with the provisions of this chapter governing paper ballots.

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

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

(d) The ballot labels printed must total in number one and one-half times the total number of corresponding voting machines to be used in the several precincts of the county in the election. All the labels must be delivered to the clerk of
the county commission at least twenty-eight days prior to the
day of the election. The clerk of the county commission shall
determine the number of paper ballots needed for absentee
voting and to supply the precincts for provisional ballots and
ballots to be cast by persons unable to use the voting
machine. All required paper ballots shall be delivered to the
clerk of the county commission at least forty-six days prior
to the day of the election.

(e) When the ballot labels and absentee ballots are
delivered, the clerk of the county commission shall examine
them for accuracy, assure that the appropriate ballots and
ballot labels are designated for each voting precinct and
insert one set in each machine prior to the inspection of the
machines as prescribed in section twelve of this article. The
remainder of the ballot labels for each machine shall be
retained by the clerk of the county commission for use in an
emergency.

(f) In addition to all other equipment and supplies
required by the provisions of this article, the ballot
commissioners shall cause to be printed a supply of
instruction cards, sample ballots and facsimile diagrams of
the voting machine ballot adequate for the orderly conduct of
the election in each precinct in their county. In addition, they
shall provide appropriate facilities for the reception and
safekeeping of the ballots of absent voters and of challenged
voters and of the “independent” voters who shall, in primary
elections, cast their votes on nonpartisan candidates and
public questions submitted to the voters.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING
PROCEDURES.

§3-5-13. Form and contents of ballots.
The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

(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
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68 on the ballot, arranged in a perpendicular column of squares
69 before each column of names.

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

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

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

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

97 (4) When an insufficient number of candidates has filed
98 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: Provided, That no paper ballot
voted pursuant to the provisions of 42 U.S.C. §1973, et seq.,
the Uniformed and Overseas Citizens Absentee Voting Act
of 1986, or Federal write-in absentee ballot may be rejected
due to paper type, envelope type, or notarization requirement.
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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bills 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 bill approved this the ___ day of __________, 2010.

Governor
PRESENTED TO THE GOVERNOR

MAR 18 2010

Time 3:08p